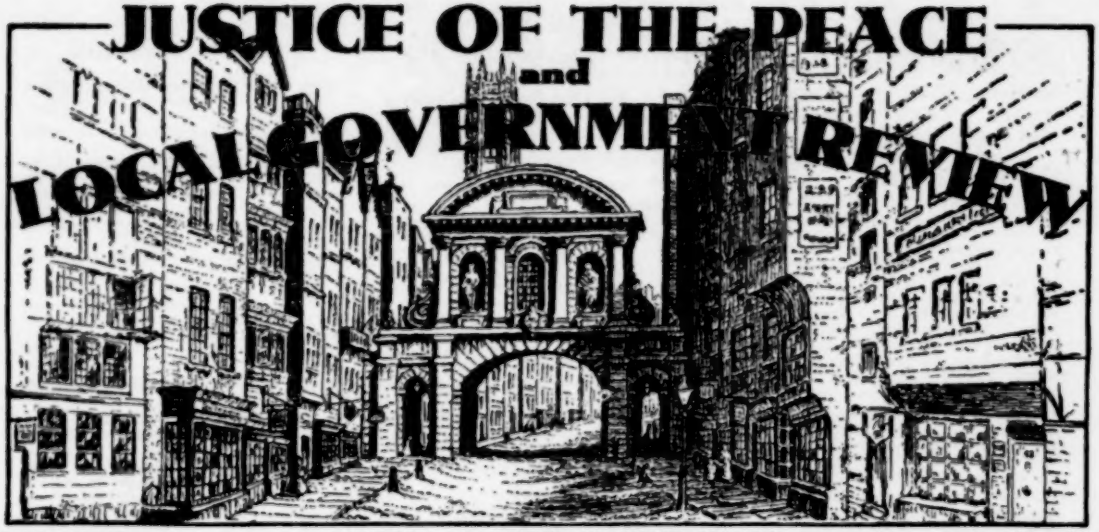

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Official & Classified Advertisements, etc.

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COUNTY COUNCIL OF THE WEST RIDING OF YORKSHIRE

Appointment of Assistant Solicitor

The County Council invite applications from Solicitors for appointment as ASSISTANT SOLICITOR in the office of the County Prosecuting Solicitor at a commencing salary of £700 per annum, rising by increments of not less than £50 to a maximum of £1,310 per annum. The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, as amended by the West Riding County Council (General Powers) Act, 1948, and the successful candidate will be required to pass a medical examination. Further particulars of the duties and terms of appointment, together with form of application, may be obtained on request, and applications should reach the undersigned not later than July 14, 1951.

BERNARD KENYON,
Clerk of the County Council.

County Hall,
Wakefield.

BOROUGH OF LUTON

Unadmitted Legal Assistant

APPLICATIONS are invited for the post of Unadmitted Legal Assistant in the Town Clerk's Department. Salary £470-£515 (Grade A.P.T. II). Previous experience in a solicitor's office essential. Experience in local government and local land charges work advantageous.

Appointment subject to Superannuation Scheme, medical examination and National Joint Council Conditions of Service.

Applications, stating age, particulars of education, previous and present appointments and the names and addresses of two referees, must reach the undersigned not later than Saturday, July 7, 1951.

Canvassing will disqualify. Relationship to any member or senior officer of the Council must be disclosed.

W. H. ROBINSON,
Town Clerk.

Town Hall,
Luton.
June 25, 1951.

CITY OF PLYMOUTH

Junior Assistant Solicitor

APPLICATIONS are invited for the appointment of Junior Assistant Solicitor in my office within Grades Va—VII (£600-£760 per annum) of the A.P.T. Division of the National Scales. Commencing salary will be according to date of admission. Previous experience in a local government office is not required; good conveyancing experience is essential. The appointment is superannuable, and the successful applicant will be required to pass a medical examination.

Applications, which must be received by me not later than Tuesday, July 17, 1951, should give particulars of the applicant's age, education, articles, date of admission, present and previous appointments and legal experience, and should state the names and addresses of not more than two referees as to character and ability.

COLIN CAMPBELL,
Town Clerk.

Pounds House,
Peverell,
Plymouth.

BOROUGH OF HENDON

Town Clerk's Department

Second Assistant Solicitor

APPLICATIONS are invited for this appointment. The salary will be in accordance with Grade A.P.T. VIII of the National Scheme of Conditions of Service, plus London weighting (£30 per annum) (*i.e.*, the inclusive salary will be £765 per annum, rising by annual increments of £25 to a maximum of £840 per annum).

The appointment will be subject to the National Scheme of Conditions of Service, the Local Government Superannuation Act, 1937, the passing satisfactorily of a medical examination and, for new entrants to the Local Government Service, to a term of probation of six months at the end of which, subject to a satisfactory report, transfer to the permanent staff will be effected.

Canvassing, either directly or indirectly, or submitting a testimonial from any member of the Council, will be deemed a disqualification.

Applications (in envelopes endorsed "Second Assistant Solicitor"), stating age, qualifications and experience and the names and addresses of two persons to whom reference can be made, must be received by the undersigned not later than Tuesday, July 3, 1951.

LEONARD WORDEN,
Town Clerk.

Town Hall,
Hendon, N.W.4.

CITY OF NOTTINGHAM

Appointment of Full-Time Female Probation Officer

APPLICATIONS are invited for the above appointment.

The appointment will be subject to the Probation Rules, 1949, and 1950, and the salary will be in accordance with such rules and subject to superannuation deductions.

The successful applicant may be required to undergo a medical examination.

Applications to reach the undersigned by Saturday, July 7, 1951.

W. M. R. LEWIS,
Secretary of the Probation Committee.

Guildhall,
Nottingham.

MIDDLESEX COMBINED PROBATION AREA

Appointment of Male Probation Officers

APPLICATIONS are invited for the above appointments. Applicants must be not less than 23 years, nor more than 40 years of age, except in the case of serving whole-time Probation Officers. The appointments will be subject to the Probation Rules, 1949/50, and salary will be in accordance with the prescribed scale plus £30 London Weighting and subject to superannuation deductions. The successful applicants may be required to pass a medical examination.

Application forms from the Principal Probation Officer, 25, Victoria Street (South Block), Westminster, S.W.1, to be returned to the undersigned within fourteen days. (Quoting J.528 J.P.). Canvassing disqualifies.

C. W. RADCLIFFE,
Clerk to the County Probation Committee.

Middlesex Guildhall,
Westminster, S.W.1.

URBAN DISTRICT COUNCIL OF COULSDON AND PURLEY

Assistant Solicitor

APPLICATIONS are invited from Admitted Solicitors for the above appointment in the office of the Clerk of the Council.

Applicants must have a sound knowledge and experience of conveyancing, advocacy, court practice and the preparation of contracts and agreements of all kinds. Previous Local Government experience will be an advantage.

Salary for a candidate who has had three or more years' legal experience from date of admission will commence at £735 per annum, rising, subject to satisfactory service, by annual increments of £25 to £810 per annum. (A.P.T. VIII) plus London Area Weighting.

The appointment will be subject to medical examination; the Local Government Superannuation Acts; the National Scheme of Conditions of Service, and to termination by one month's notice in writing on either side.

Applications, on forms to be obtained from the undersigned, together with copies of three recent testimonials, to be submitted by Friday, July 13, 1951.

Canvassing will be a disqualification.

ERIC F. J. FELIX,
Clerk of the Council.

Council Offices,
Purley.
June, 1951.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

The Elderly Motorist

In his presidential address at the annual conference of the Justices' Clerks' Society at Torquay, Mr. James Whiteside covered a wide field, as was natural in view of the extent and variety of the jurisdiction of magistrates' courts. If we choose only one or two points out of a stimulating and instructive discourse, it is simply because we have not space for a verbatim report.

His was a practical suggestion on the subject of motor drivers advanced in years. There is at present no upper age limit for drivers, but we feel sure that many people will agree with Mr. Whiteside that there should be an age limit, on reaching which a man must cease to drive unless he passes annually a test of competence. The mere fact that a man has driven for many years without accident is not proof that he continues to be fit to drive at an advanced age, when reactions may be slower and physical disabilities may begin to affect his efficiency. If he cannot pass the test or if he declines to take it, he should give up driving. As Mr. Whiteside said, in ninety-nine cases out of a hundred, dangerous driving occurred in a momentary aberration. There was seldom the slightest evidence of guilty intent, but it was true that some people, whether due to an impetuous temperament, nervousness or old age, should not be in charge of motor vehicles on the road.

Mr. Whiteside also called attention to the fact that a person disqualified for holding a licence, not for a definite period but until he passed a driving test, might continue to drive for some time by applying for a succession of provisional licences. This also is a matter of some importance.

These are constructive suggestions, and we hope they will receive serious consideration. It is far better to prevent accidents by keeping off the roads drivers who are likely to cause them than to mete out heavy punishment after accidents have happened when, as Mr. Whiteside truly observed, in most cases there has been no criminal intention.

Juvenile Crime

Few conferences at which magistrates or clerks are present fail to touch upon the question of juvenile crime. Mr. Whiteside had something to say on this subject. He was deeply mistrustful, he said, of the picture shown by the statistics. To lump mischief with crime was misleading and he suggested that juvenile courts should classify cases to distinguish those involving real criminality. He also invited consideration of whether the holding of juvenile courts in semi-privacy had any real practical advantage which outweighed the centuries old distrust of the secret administration of justice.

As to the statistics, we have always held that their value is limited, because all kinds of local conditions and personalities may influence the number of cases brought before juvenile courts, and an increase in the number does not prove conclusively that there has been an actual increase in the number of offenders. They mean much more to the people who know the courts and the local conditions than to those who view them from afar. The idea of separating offences committed in a spirit of mischief from those indicating some degree of real criminality is attractive, but difficult to put into practice. One offence, of stealing or of wilful damage may be due to mere mischief, while another similar offence may be committed with a really criminal intention. If they are to be separated into different groups for statistical purposes, who is to set the standard of classification? At one court the "boys will be boys" attitude may result in filling the columns devoted to pure mischief at another court the "determined to stop all this juvenile crime" standpoint may result in swollen statistics of offences involving criminal intent.

At all events, Mr. Whiteside's warning about statistics should be heeded.

On the question of publicity in juvenile courts, public opinion which used to be much in favour of the present law, shows signs of hardening in favour of the open juvenile court and the right to publish names and addresses of offenders. This publicity it is contended would be one kind of deterrent influence.

The Summary Jurisdiction Acts

At the conclusion of the conference members of the Society and a number of justices from Torquay and the neighbouring divisions had the pleasure of listening to Sir Granville Ram, K.C.B., K.C., J.P., chairman of the Statute Law Committee, on the subject of "Statute Law Reform with particular reference to magistrates' courts." He showed how the idea of revision and codification could be traced back to the reign of that remarkable young king, Edward VI who, at the age of fifteen, was asking that the law should be made simpler, and to be found in one place. Various projects for codification during succeeding centuries achieved little result, but some codification was accomplished during the nineteenth century, of which a number of Acts of 1861 dealing with branches of criminal law are familiar examples. Other consolidations have been effected during the present century.

As is widely known, consolidation and amendment on the Summary Jurisdiction Acts is on the way. Like many others who have studied these Acts and the Indictable Offences Act, Sir Granville Ram is deeply impressed by the excellence of their substance, in spite of the diffuse language judged by modern standards in which they are expressed. Consolidation and

amendment of summary jurisdiction law will be a difficult task, but evidently it will be in the hands of those best able to undertake it. The work of Sir Granville Ram as a draftsman is too well known to need more than mere mention. Apparently, the first step is to be consolidation, with amendment to follow at a later stage in a separate Bill. During the first stage, those who may see the Bill can best assist by confining any suggestions to such points as omissions and by refraining entirely from proposing amendments of the law. Sometimes amendment precedes consolidation, sometimes the process is reversed. Occasionally the two are combined and where amendments are formal in character, the new Parliamentary procedure under the Act of 1948 proves expeditious and convenient. In the present case, consolidation and amendment are each formidable tasks, and no doubt they must be undertaken separately.

One Justice Sitting Alone

For most purposes, it is necessary for at least two justices to sit together when acting judicially, though even in summary proceedings a single justice may exercise certain powers. The matter is different when the proceedings are under the Indictable Offences Act, as appeared in a recent case to which reference was made in the press.

A single justice took evidence upon a charge of manslaughter, and in the result the defendant was discharged. Apparently, someone must have doubted the validity of the proceedings, as the opinion of the Attorney-General was invoked. He stated that it was certainly competent, and not very exceptional for one justice sitting alone to take depositions and decide the question whether or not there was a *prima facie* case against the defendant to justify committing him for trial. In this instance, the justice had come to the conclusion, after hearing all the evidence for the prosecution and the explanation given by the defendant, in his evidence in answer to it, that there was no reasonable likelihood that a jury, properly directed, would convict and accordingly he discharged the accused.

Everything was done regularly and according to statute. In particular, the justice had in mind the requirement in s. 12 (8) of the Criminal Justice Act, 1925, that the examining justice or justices shall take into consideration any evidence given on behalf of the defence when deciding whether or not to commit the accused for trial.

A newspaper report refers to the result of the case as an acquittal. This it was not, because the defendant was never before a court where he could be tried and convicted or acquitted, and he could be again brought before examining justices if further evidence were forthcoming. In fact, that rarely happens, and in the mind of the defendant and others interested, the effect is felt to be equivalent to acquittal, although that is not so as a matter of law.

Attendance Centres

Those responsible for managing attendance centres are evidently learning useful lessons from experience. Further information in the press shows how the experiment is being handled at Smethwick, and how certain changes in policy have already been found desirable. One writer, in the *Manchester Guardian*, who has seen a class in session says: "The two dominant impressions it left are interlinked: first, the grotesque contrast between the typical juvenile delinquent in the actual and in the popular conception; second, the difference between the plan for the training scheme and its working out 'on the ground.'"

It was intended to divide a three-hour attendance into periods of physical training, handicrafts and lectures. It very soon appeared that most of the boys sent to the centre would not swallow "citizenship and local government and that." Indeed, even talks on subjects which one would expect to appeal to boys made them restless and inattentive. The formal lectures have therefore been abandoned, and instead there are quite simple talks, amply illustrated, designed to show the advantage of honesty, punctuality, cleanliness and respectfulness. It is also an object of these little talks to show that crime does not pay.

One difficulty is that many of the boys have no ambition at all. In order to inculcate some purpose in life, stories are told of poor boys who have got on, like the farm boy who became Foreign Secretary, and of the superintendent of police who had worked at the coal face when he was thirteen.

The physical training is strenuous and fortunately the equipment is good. Instruction in "handicrafts" is on practical lines, having regard to the shortness of the time available out of a maximum of twelve hours attendance. Boys are shown how to clean a car inside and out (but not shown how to start it!), to clip a hedge or mend a lock.

"There is no doubt," concludes the writer of the article, "that the police here are doing a good job; they are strict without being unduly harsh, and are shrewd, practical, and familiar with the background of the lads with whom they are dealing . . . The obvious weakness of the system at the moment is that there is no follow-up. A boy who has responded to training will leave Smethwick—or Peel House, or Hull, where there are other centres—with, as the police put it, 'a bit of sense rubbed into him, and smartened up generally.' Where, though, does he go from here?"

It begins to look as though there is more in the idea of attendance centres than many people believed, and that it is capable of further development.

A New Phase of an Old Notion

A man, as Morris Finsbury remarked, is not on oath in an advertisement, and where a member of Parliament forwards an unintelligent suggestion to a junior minister the latter, so long as any answer he gives is not misleading, should perhaps not be regarded as under obligation to reply with too precise a care for language. When Mr. L. R. Carr, M.P., sent to Mr. Douglas Jay a suggestion (apparently culled from some publication unknown to us) that the Local Government Act, 1948, had altered the legal basis for assessing "sports clubs" to local rates, and—as we infer—asked that the Inland Revenue when giving effect to the new Act should assess the property of such clubs below its proper value, Mr. Jay was batting on an easy wicket when he pointed out that the Act had not changed the basis of assessment, and upon a safe (if less of a scoring) wicket when he went on to say that the Revenue could not make assessments at less than the true value of the property. Had he said this and no more, all would have been well. Had the matter been left as one between him and Mr. Carr, even with the trimmings which he added, all would have been well enough for practical purposes, even if the correspondence had been published by Mr. Carr or the interests on behalf of which Mr. Carr had approached the Government. The Treasury, however, were not content with this; they issued the letter in neostyled form through "the Treasury Information Division," thus converting a personal letter into an official pronouncement, the precise terms of which must now be open to public examination. The letter says quite truly that—"In law, property of this kind was, and is to be, valued for rating at the amount of the rent which a tenant would reasonably be expected to pay for the property. There is no exemption in favour of voluntary organizations, or sports clubs as such. The Local Government Act, 1948, has

not altered the law of valuation, as the article suggests (except for dwelling-houses) and voluntary organizations never had, in law, a right of appeal on the ground that the nature of their work justified favourable treatment. Prior to the transfer of the valuation work to the Inland Revenue, however, it was the practice of some local authorities, but not of all, to assess properties occupied by voluntary organizations and sports clubs, at less than the true annual value. These " sympathetic " assessments varied widely in amount as between one local authority and another."

Sympathetic Valuations

So far as this goes, our readers will remember how suggestions constantly came along in the last century and again more recently for the exemption of voluntary hospitals from rates, and between the wars similar suggestions had also come along for " recreation grounds not dedicated to the public, *e.g.*, football, cricket and other sports grounds." We take these words in quotation marks from resolutions 54 and 55 of the Central Valuation Committee. It is curious that the Treasury (or the Financial Secretary) when it was decided to publish the reply to Mr. Carr, did not refer to these resolutions. The Inland Revenue (says the letter) " have informed the National Council of Social Service and National Playing Fields Association that in preparing the new valuation lists, which are due to take effect in April, 1953, they will be unable to continue the practice of making sympathetic assessments. Local authorities were in the past both the valuation authority and the rate collecting authority. If they chose to be generous towards voluntary organizations by making sympathetic assessments at the expense of their rates revenue no one was likely to object."

Not only (it seems) have the Treasury not heard of the Central Valuation Committee's recommendations ; they are apparently not aware of the rights, under the Rating and Valuation Act, 1925, and earlier legislation about valuation, of ratepayers prejudiced by an unduly low valuation, and of the county valuation committees who were brought in precisely because " generosity " and " sympathy " at the expense of the rates did affect people other than the rating authority and its own ratepayers. " But the function (the letter continues) of the Inland Revenue is simply that of a valuation authority. They have no power to make assessments at less than true value, at the expense of the local authorities' rates revenue, and local authorities would no doubt object if they did." At this point in the letter we really begin to feel that local authorities have a right to be aggrieved. Why should they object now, in areas where they themselves assessed " sympathetically " (and got away with it, for of course the statement that local authorities were both the valuation authority and the rate collecting authority is a slovenly half-truth)? The published letter concludes with the following : " On the other hand, contrary to suggestions that I have seen made publicly, local authorities had, and still have, power to remit rates on grounds of poverty. It is thus still open to the local authorities—who after all are the bodies financially affected —to use their discretion in favour of voluntary organizations and sports clubs in appropriate cases."

Clubs as Poor Persons

This seems to us almost viciously misleading. We do not wish to assert positively that a " sports club " cannot as a matter of law be a " person " to whom s. 2 (4) of the Rating and Valuation Act, 1925, could be applied, for that subsection is quite general, and was passed later than s. 19 of the Interpretation Act, 1889. But we do not recall having ever known it or its predecessors, s. 11 of the Poor Relief Act, 1814, and s. 225 of the Public Health Act, 1875, to be used in favour of a sports club, and we could argue pretty strongly, from the pedigree and context of the subsection in the Act of 1925, that a contrary intention within the meaning of s. 19 of the Act of 1889 does appear therein. The purpose of mentioning the power now, in a pronouncement issued from the Treasury, when the Inland Revenue has become the valuation authority, can only be to throw upon local authorities the odium of declining to give relief from rates which Parliament has not given and which the Inland Revenue, on the valuation side, is (quite properly) not prepared to give.

The true reason for not giving relief from rates to the voluntary hospitals, or to the sports clubs, or charitable organizations—or railways or farms or clergymen or newly established industries —is that relief to A can only be granted at the cost of B and C. Sometimes, as in several of the instances just mentioned, Parliament has decided that such relief is to be given ; more often its decision has been the other way. If relief were to be given to a sports club, this would mean that its present subscribers would *pro tanto* be relieved at the expense of themselves and of all other ratepayers (and of the taxpayer, in these days of heavy grants from the Exchequer), including those who cannot afford to subscribe or may not wish to do so. Relief so made available would be in the worst of all forms, namely a hidden subsidy. Local authorities, who can appreciate all this, even if private members of the House of Commons cannot, have a right to feel aggrieved if the responsibility of refusing to give such hidden subsidies is put on them—the more so that, for the reason we have just stated, their refusal protects the taxpayer at large as well as their own ratepayers.

The New Towns

We welcome the first two issues to be made available to the public generally of the *New Town News*. This is a neostyled production of the District Councils (New Towns) Association, which has previously been sent to the Association's members only, but is now no longer to be regarded as confidential. As the publication becomes known it may be found that there is enough demand to call for printing. At present, it can be said that the issue for April, 1951, and that for May which came into our hands a few days ago, possess much interest, not merely for local authorities concerned with the " new towns " but for (at least) all of the smaller local authorities. Information is given about the Harlow exhibition, which forms part of the Festival of Britain, and about the anticipated costs to be incurred by development corporations under the New Towns Act. Progress is recorded from each of the " new towns," and information is collected upon planning and development primarily affecting other areas, but possessing an indirect interest for " new towns." In particular, we have been interested to see an extract from the *Architect and Building News*, comparing the conditions of towns in England and New England.

A Local Act Remedy

Section 26 of the Birmingham Corporation Act, 1948, enacts that : " If the owner of any land in the city fronting adjoining or abutting on a street which is not a highway repairable by the inhabitants at large agrees to sell such land or any part thereof upon terms which include a provision to the effect that he shall pay or procure the payment of such expenses of any private street works executed or to be executed by the corporation as may be apportioned against the land agreed to be sold he shall before the completion of the conveyance of such land deposit with the corporation or otherwise secure to the satisfaction of the corporation the payment of such sum as will in the opinion of the corporation be sufficient to pay the amount of the expenses

apportioned or to be apportioned against the land agreed to be sold so far as such expenses have not previously been paid to the corporation."

Section 40 of the Wolverhampton Corporation Act, 1950, is almost the same, but contains a new subsection providing that, " If any sum deposited with the corporation or otherwise secured to the satisfaction of the corporation in accordance with the provisions of subs. (1) of this section is not sufficient to pay the amount of the expenses apportioned against the land agreed to be sold the corporation may recover the deficiency from the person making the deposit or giving the security and if any sum so deposited exceeds the amount of the expenses the corporation shall repay the excess to the person making the deposit."

Each section contains a penalty clause, providing for a fine of £20, and of £100 for a second or subsequent offence. In connexion with each, it is to be remembered that the enactment is not retrospective : it applies, that is to say, only where the transaction between the builder and the purchaser has taken place after the commencement of the Act. The Wolverhampton Corporation Act also contains, in s. 39, a provision that, in any case in which the council have required plans and particulars of the proposed development of any land to be furnished, the council as a condition of their approval thereof may require the owner of the land upon which a new street is to be laid out to undertake to pay and give security for the payment of any expenses which may be incurred by the council in executing any private street works with respect to such street or any part thereof, and such owner or his successors in title shall not lay out such street unless any undertaking and security required by the council have been given. It is for the council to decide in each case whether to use s. 39 ; if they do so, the security taken thereunder will be available also for purposes of s. 40, if the builder has entered into a covenant falling thereunder. These local Act powers, unlike so many affecting building and development, which local authorities have persuaded parliamentary committees to grant, appear to be innocuous. The builder is not obliged to enter into a covenant to reimburse private street works charges falling upon purchasers of the houses he has built ; if he does so covenant, it is an advertising or salesmanship device—legitimate, where he can perform and means to perform his covenant, but a trap for an unwary purchaser in other cases. No obstacle is put in the way of development by the local authority's intervening to protect the purchaser against default.

CRIMINAL LAW — MASTER AND SERVANT

[CONTRIBUTED]

It is believed that the position between master and servant so far as the criminal law is concerned is not altogether appreciated. The statement—without any qualification—that a master is not criminally liable for the acts of his servant is much too narrow. Generally speaking, a master is not be to held so responsible but in certain circumstances he may be. Prosecutions involving master and servant are not infrequent, *e.g.*, under the Licensing Acts, the Food and Drugs Acts and under the many statutory instruments forming part of the emergency legislation, alas, still a part of our everyday life. It is necessary, therefore, when any such prosecution arises to obtain guidance from some of the leading cases on the subject in order that a correct conclusion of liability may be arrived at.

When referring to the cases on this subject it is important to bear in mind the two different types of criminal offence with which we shall be concerned, namely, those which are not an absolute prohibition and which require an element of *mens rea*, as opposed to those where there is an absolute prohibition with or without *mens rea*. The principle was aptly stated by Channell, J., in *Pearks, Gunston & Tee Ltd.* v. *Ward* (1902) 66 J.P. 774, when his Lordship said : " By the general principles of the criminal law, if any matter is made a criminal offence, there is imported into it that there must be something in the nature of *mens rea*. Therefore in ordinary cases a corporation cannot be guilty of a criminal offence nor can a master be liable criminally for an offence committed by his servant. But there are exceptions because the legislature has thought it so important to prevent the act being committed that it forbade it absolutely to be done in any case. And if it is done—whether the man has any *mens rea* or not, whether he intended to commit a breach of the law (if he knew the law) or not—if he does that forbidden thing he is liable to a penalty."

The first thing to decide, therefore, is whether or not the offence is absolutely forbidden. An example is the case of *Commissioner of Police of Metropolis* v. *Cartman* (1896) 60 J.P. 357, where a master was held to be liable on the act of his servant of selling liquor to a drunken person. In his judgment Lord Russell, C.J., said : " It is intended by the section in the interests of public order, to prevent the sale of intoxicating liquor to drunken persons. Now, as in the great majority of instances, licensed persons depute the ordinary practical carrying on of their business to others, the question is, are they or are they not to be held liable for the acts of those other persons ? I think that they must be held liable subject to this qualification that such acts must be within the scope of their employment in the carrying on of the business. Does it make any difference that the employer gives private instructions to the servant to observe the law and not to sell to drunken persons ? I think not, because if so, the object of the statute would be entirely defeated. I think the legislature intended to put the responsibility on the licensee provided that any offence committed comes within the scope of the employment."

That the act of the servant must come within the scope of his employment is of vital importance. In *Barker* v. *Levinson* (1950) 114 J.P. 545, it was held that where an act done by a servant is absolutely prohibited by law, the master is criminally responsible for it only if he has authorized it or if it is done within the general scope of the servant's employment. If the illegal act is one which the master in no way authorizes the servant to do and is not within the general scope of the servant's authority, the master is not criminally liable. This case was an appeal against a decision in which the respondent had been found not guilty of requiring a premium as a condition of the grant of a tenancy of premises. He had authorized his servant to let a flat to a certain person if the servant was satisfied that this person would be a satisfactory tenant. The servant let the flat and required and received a premium. It was held that the requiring and receiving of this premium was outside the general scope of the servant's authority. *Per* Lord Goddard, C.J. : " The master is responsible for a criminal act of the servant if the act is done within the general scope of the servant's employment. If a master chooses to delegate the conduct of his business to a servant, then, if the servant in the course of conducting the business does an act which is absolutely prohibited, the master is liable." His Lordship went on to say that if the respondent in this case had put his servant into the position of being a general agent and had

left the management to him and he had done an illegal act it may be the respondent would have been liable. The principle underlying the various decisions dealing with the criminal liability of master and servant was explained by Lord Goddard in *Linnett* v. *Metropolitan Police Commissioner* (1946) 110 J.P. 153. The principle does not depend merely on the fact that the relationship of master and servant exists. It depends on the fact that the person who is responsible in law has chosen to delegate his duties, powers and authority to somebody else.

It seems to be a matter for the court, in each case, to decide if the legislature intended to place criminal responsibility on a master for an act done by his servant in the course of his employment. Guidance to this may be found in the judgment of Atkin, J., (as he then was) in *Mousell Bros. Ltd.* v. *London and North Western Railway Co.* [1917] 2 K.B. 836 ; 81 J.P. 305 (recited in *D.P.P.* v. *Kent and Sussex Contractors Ltd.* (1944) 108 J.P.1), where his Lordship said : " To ascertain whether a particular Act of Parliament has that effect (that the principal is liable if the act is in fact done by his servants) or not, regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person upon whom it is imposed, the person by whom in ordinary circumstances it would be performed and the person upon whom the penalty is imposed. Therefore, when such a question as this arises one has to see whether the thing is absolutely forbidden or whether it is merely a new offence to which ordinary principles of criminal law as to *mens rea* would apply. I see no difficulty in the fact that an intent is necessary to constitute the offence. That is an intent which the servant might well have. The penalty is imposed upon the owner for the act of the servant. Of course, the result could only be reached where any person is given express or implied authority or is estopped from saying that he had not." It is submitted that if the court decides there is reasonable evidence of an expressed or implied actual or constructional authority the master is liable.

The principle appears to be the same even where an unauthorized act is forbidden by the master. In *Brown* v. *Foot* (1892) 56 J.P. 581 (approved in *Parker* v. *Alder* (1899) 1 Q.B. 20), it was held that a master employing a servant is responsible for the act of the latter and that even when the servant has done something contrary to the master's instructions. In this case the master was a retail milk seller, and it was his practice, on receiving the cans of milk from the country, to take a sample from each can before it was sent out for sale. He also published a warning to his servants who sold the milk from the various cans, that any servant whose can of milk did not correspond with the sample taken from it would be liable to dismissal. One of his servants admitted that he had watered his can previously to selling some of its contents to an inspector, and it was held that the master had been rightly convicted for selling adulterated milk when he had not only expressly forbidden his servants to adulterate, but had also taken special precautions to prevent them from doing so. It was stated that the servant was admittedly employed in the general business of the master in selling milk by retail and the master must see that the servant within the scope of his authority does not contravene the Act. *Commissioner of Police of Metropolis* v. *Cartman, supra*, was also a case where the act had been forbidden by the master.

A master, may, of course, be either an individual or a corporation. Dealing with the position of a master as a corporation, it was held in *Mousell Bros., Ltd.* v. *London and North Western Railway Co., supra*, that under a certain section of the Railway Clauses Consolidation Act, 1845, a principal is criminally responsible for the act of his servant in giving without the knowledge of the principal a false account with intent to avoid payment of tolls if the servant is acting within the scope of his employment and that where the principal is a limited company the same rule is applicable as where the principal is an individual. On the same subject a case of some importance is that of *D.P.P.* v. *Kent and Sussex Contractors Ltd., supra*. Here, a record had been furnished for the purpose of an order made under the Defence Regulations, on behalf of a company by its responsible agents, the record containing statements which were false in material particulars and which were known to the agents to be false. It was decided that the knowledge of the responsible agents must be imputed to the company and the company could in law be guilty of offences notwithstanding that an intent to deceive and knowledge of the falsity were essential ingredients. A company, of course, normally acts through its authorized agents.

The general conclusion to be drawn so far is that in that class of offence which the law recognizes as absolutely forbidden, whether or not *mens rea* is an ingredient of the offence, the master is responsible for the criminal acts of his servant, even if forbidden, so long as they are committed within the general scope of the servant's employment and authority.

No reference is being made in this article to those special defences open to defendants and the provisions relating to bringing other persons into the proceedings (which in some cases include servants) such as under the Food and Drugs Acts.

With regard to those offences which must contain an element of *mens rea* and are not of that class already considered, generally speaking, the condition of mind of a servant is not to be imputed to the master to make him criminally liable for his servant's acts : *Chisholm* v. *Doulton* (1889) 53 J.P. 550. Where intent or a guilty mind is an essential ingredient of the offence, therefore, the master is not liable for his servant's acts unless he has authorized or been party to them in some way. In *R.* v. *Pearson* (1908) 72 J.P. 451, it was held that a master cannot be convicted of receiving stolen property where the only evidence is that his servant received the property and there is no evidence that he received it with the authority or knowledge of his master. Possession by a servant may be possession of the master but only where there is evidence that the master has knowledge of his servant's possession. In the case of *Taylor* v. *Nixon* (1910) 2 I.R. 94, a married woman was licensee, and her husband manager, of a public house. An inspector asked for whisky out of a particular bottle and the husband deliberately smashed it, so that no sample could be taken. The King's Bench Division in Ireland quashed the conviction of the wife of obstructing as there was no evidence that the act was done with her authority or connivance. In *Ferguson* v. *Weaving* (1950) (*see* p. 89, *ante*), it was held that as the consumption of liquor after permitted hours was an offence in the consumer only and was not an offence by the licensee against which there was an absolute prohibition, on the findings of the magistrate that the respondent did not know that the customers were committing an offence the knowledge of her servants could not be imputed to her so as to render her an aider and abettor.

The general conclusion to be drawn from those cases dealing with offences not of the type the legislature has absolutely forbidden but in which *mens rea* is necessary to constitute the offence, is that the master is not liable for his servant's acts without an element of *mens rea* on his, the master's, part.

Cases involving master and servant are not always easy to decide, as instance the number of appeals, and courts are well advised to proceed with caution before arriving at a decision that a master is, or is not, liable in any particular case. They should have regard to the various authorities and carefully consider the wording, scope and intention of the particular statute concerned. J.V.R.

LAW OF THE FOREST

By ERNEST W. PETTIFER

(*Concluded from p. 387, ante*)

Turning now to a much later Assize at Huntingdon in the thirty-ninth year of Henry III (1255), the reader will note that, in spite of the confirmations of the Forest Charter during his reign, there is no slackening in the severity with which the forest laws were enforced. The first case concerned Michael of Debenham who slew a buck in a field at Yaxley with a pickaxe ! The procedure followed was as merciless as in the days of John—Michael was caught red-handed and put in Huntingdon prison. He escaped, but the sheriff who had gaoled him was dead when the trial came on. It did not matter that he had gone before the Judge of all—" to judgment with the said Henry (the sheriff) for the said escape." John of Debenham, master of Michael, had harboured the fugitive, therefore he was in mercy. And Michael did not come—let him be outlawed. And an unfortunate passer-by, Richard of Stilton, saw the evil deed done and did not raise hue and cry. He was seized by Oliver of Upton, and mysteriously died that day. And his pledges ? They brought the first hint of mercy into the story—they were acquitted. But four townships, which did not make inquiry into the facts, were all fined. So this story can be summarized thus—one outlaw, two dead men, many impoverished people, but a substantial amount in fines for His Majesty.

Now and then a forester exceeded his authority so outrageously that a presentment was made to the court. In one such case Norman Sampson, a mounted forester, " took a certain man to Houghton," to his lodging, " and he put him upon a harrow and pained him sorely so that the man gave to him twelve pence that he might be released from the said pains, and afterwards he gave to him five shillings that he might by his aid be able to withdraw quit."

It is doubtful whether the pain inflicted on the victim would alone have been sufficient, in the eyes of the court, to have him brought to judgment, but Norman Sampson had committed other and more grievous crimes—he had sold the king's oaks, and taken venison of the king—therefore the sheriff was ordered to bring him before the court. As there is no further record of his trial it is likely that the erring forester decided to turn outlaw rather than face the court.

A further case at the same assize concerned William Berick, landlord of Norman Sampson, the forester. The latter had compelled William's two daughters to go to Huntingdon every day to sell firewood from the forest, " and therewith," the record runs, " they buy victuals for the said Norman." William was brought into the picture because he had enjoyed free pasturage for his beasts as a consideration for the daughters' services. A simple and trusting soul, he ventured to the assize when summoned, and forthwith found himself in gaol for an unspecified period !

There was no light-heartedness attendant upon the grim assizes of the Forest, but one incident at Huntingdon is not without a trace of humour as we read it seven hundred years later. " Master Robert le Band of the hospital of Huntingdon " apparently came before the justices as a conscientious objector who disapproved strongly of the King's policy. " He alleged that the Lord King ought not to have attachments of vert and venison and that neither the foresters nor the verderers ought to make any attachment thereof in the town of Huntingdon." The sensation in court must have been profound as Robert propounded this astounding theory. When the astonished clerk of the court had partially recovered, he wrote with trembling hand this further record of the amazing incident—" And this he wished to establish in every sort of way, so that by his chatter the court was disturbed and the business of the Lord King hindered. Therefore he is committed to gaol." We should have expected this to be the end of Robert and his startling beliefs, but happily there is a sequel—" And afterwards he found pledges, Gilbert of Wopston and John Russell, of Grafham, and he is taxed at half a mark ! "

At the Northampton Assize of A.D. 1255, a young offender was before the court, John the son of Stephen Cut. There was evidently some sympathy for the boy, for witnesses from his village dared to come to depose that he was young ; that he found the fawn dead, and took it without evil intent, *and that he had been in prison a year or more*. The story must have impressed the justices for he was pardoned.

The parson of Old was the next defendant, his offence that of taking a doe. He did not come, but the Bishop of Lincoln obeyed an order of the court to produce him, and the parson had to pay 100 shillings for his venison. The offence, by the way, had taken place six years earlier. In the following entry William, the charcoal burner, found a dead buck five years earlier, took it home, and divided the meat with two other men. All were committed to prison, despite the fact, in all probability, that they had already spent the five years in gaol.

The relative importance of offences against the common law and those which involved breaches of the king's game laws is forcibly illustrated by a case at this assize. Robert (I), Geoffrey and Robert (II) were taken with venison and imprisoned at Northampton. The Sheriff, explaining the non-appearance of Robert (I) and Geoffrey, recounted that they had already been hanged at Northampton for theft. One of the justices, evidently anxious to clear himself, volunteered the information that neither the foresters nor the sheriff had mentioned that the men were in gaol for an offence against the venison. " To judgment with the sheriff," said the court ! Robert (II) was fined 2½ marks, but the fact that two other fines had been lost by the hanging evidently rankled in the minds of the Justices of the Forest !

There was an unfortunate ending to a wedding feast at Pilton. Walter and Nicholas, sons of Sweyn, and Simon the Woodward killed a beast and carried it to the house of Walter Pate as their contribution to the festivities. There the beast was eaten, doubtless with much appreciation, but a visit from the keepers brought the party to an abrupt conclusion. Awaiting the arrival of the justices, the three generous guests probably had ample time to regret their generosity at the king's expense, and, as they all went back to gaol after trial, their only consolation would be that they had not forfeited their lives, as well as their liberty.

At Oakham in A.D. 1269, James Panton, to whom the king had rather surprisingly given two does, was charged with taking six. There is given a brief picture of one method of taking deer—" And by reason of the noise which he made by beating drums when he beset the does, many beasts came out of the forest and were taken, to the loss of the Lord King and the detriment of his forest." It is possible to read into this narrative the theory that the " many beasts " which were lost were taken by other persons attracted by the drum-beating. But it was James who went to prison.

This assize is rather notable for a presentment against Peter de Neville, chief forester of the Forest of Rutland, and a very

important personage. It is a most lengthy document containing scores of charges for many extortions, withholding fines due to the king, felling 7,000 oaks worth 1*s.* each, and keeping the proceeds illegally, establishing his own prison, and so on. One illustration only may be given because it reveals what his prison was like. " He imprisoned Peter the son of Constantine of Liddington, for two days and two nights at Allexton, and bound him with iron chains, on suspicion of having taken a certain rabbit in Eastwood. And the same Peter the son of Constantine gave two pence to the men of the aforesaid Peter (de Neville) who had charge of him to permit him to sit upon a certain bench in the gaol of the same Peter, *which is full of water at the bottom.*" It is disappointing that there is no further record of this presentment.

Amongst the Pleas of the Forest at Sherwood, Nottinghamshire, one entry is of interest because it contains a very early reference (A.D. 1287) to the stocks. Put shortly the story runs that two men were seen coming through the town of Wellow with two fawns. One man, Richard, was taken by keepers lying in wait, and put in the stocks of Peter de la Barre. Robert, his friend, broke the stocks, presumably in an attempt to release Richard, and then fled, but it would appear from the statement that he was dead, that his flight was unsuccessful and that he was overtaken and killed. Richard came before the court and was detained in prison, later finding sureties and paying a fine, but Peter de la Barre, the owner of the stocks, for some reason not given, was ordered to be brought before the court by the sheriff, although the prisoner in the broken stocks had not escaped.

From the records of these later assizes, it can be deduced that the foresters and verderers were not having it all their own way, and that the ever-increasing army of outlaws were growing bolder in their raids upon the game in the forests. There are several entries which indicate that organized bands of desperate men were quite prepared to offer battle to the forest guardians if disturbed in their hunting. In A.D. 1246 there was an affray in the lawn of Beanfield, Northamptonshire, between a number of foresters and five poachers, one armed with a crossbow, and four with bows. The men stood their ground when surprised by the foresters emerging from ambush, and a forester was shot through chest and arm by arrows and later died. The poachers escaped owing to the darkness and the thickness of the undergrowth, and although rigorous inquiries were held no one was apprehended.

In another encounter the keepers came upon sixteen armed men, two on horseback and fourteen on foot, hunting deer. There was an exchange of arrows and the keepers fled, but one was captured by the band and tied to an oak. It is not perhaps without significance that the captured man was the hunter of one of the Justices of the Forest, and it is possible that it was his master's position which saved his life, for he was afterwards released unharmed. Another entry reminds us of the days of Robin Hood and his men in their garb of Lincoln green, for one man is described as being clothed in green doublet and hose. Briefly summarizing some of these affrays—a body of outlaws wounded a keeper and took his horn and sword and the bit and bridle of his horse—eleven men entered the Forest of Rockingham and opened fire on the keepers, who fled—two keepers saw eight men with bows and arrows and greyhounds and wisely did not approach them—seven men, three of them masked, were armed with bows and arrows and had greyhounds. And, lastly, a body of keepers who beat a rapid retreat when they suddenly came upon a very large band (" a multitude," the record says) of archers engaged in an organized raid on the forest. All these cases and others appear in later records. The policy of outlawing men for even the most trivial breaches of the forest laws was having the inevitable consequences. Bold and desperate men who had nothing to lose save life itself were not likely to treat the king's venison and other game with special consideration after having lost all—homes, livelihood and the protection of the law—for taking a deer or a hare. Nor were they likely to show any marked respect for the army of persecutors, the king's men, when they recalled the cruelties and injustices inflicted by them on the common people.

One final illustration of the growing spirit of revolt may be given—" Richard of Pentwood, journeying through his bailiwick followed two men until he found them, that is to say, Hugh of Beckbury and Thomas his brother. And they had three greyhounds unleashed, and five hares. And when Richard took the aforesaid Hugh, Thomas his brother, with drawn sword, delivered him and they both fled. And the said Richard immediately raised the hue and cry, and followed them until night stole them away."

So the endless conflict between king, landowner and keeper on the one side, and the poacher on the other, went on. It furnished a ceaseless supply of recruits to the army of homeless, friendless and lawless men who infested the countryside. Finally, in the reign of the third Edward, it was to the Justice of the Peace that the onerous duty of dealing with masterless men, the outlaws, was entrusted. The Courts of the Forest, and the laws, did not come to an end with the creation of Justices of the Peace, but eventually it was the Justices of the Peace who were left to carry on the endless campaign to suppress the poacher.

WHERE THE LAND ENDS

Sir Malcolm Eve's lecture upon " The Future of Local Government," delivered before the University of London on February 6, and published on June 14, 1951, is a classic in miniature, which should start fresh trains of thought among all educated persons—and would surely do so, if those persons were not so heavily preoccupied this year with defence and international affairs. We shall return to it, and deal fully with its contents, as soon as there has been time to study it. We mention it here because at the outset the learned author points a contrast between the " ancient geographical shires " and the " administrative county councils " dating only from 1888, and speaks of the relation between boundaries and functions. This contrast has been brought rather vividly to our own notice, in connexion with the exercise of certain functions ; we have indeed been asked whether (in connexion with the commission of a justice of the peace) we could say what a " county " is, and have been driven to confess that apart from s. 10 of the Justices of the Peace Act, 1949, we could find no quick and ready answer—even that section in its own sphere does not answer every question, as will be seen from what follows. In many a statute one finds a county, or an administrative county, or a county council, and when it occurs in a statute of earlier date than 1890 one is told what it means by the Interpretation Act, 1889 : incidentally the meaning given by that Act is excluded from the Local Government Act, 1888. In later statutes one has no such guidance : specific definitions here and there do not clear up all aspects of the question. The answer which would most readily be given at the present day is that an administrative county, being by

s. 100 of the Local Government Act, 1888, defined as the area for which a county council is elected, must be the aggregate of the electoral divisions, and, since these consist of one or more parishes, that the administrative county has a boundary running along the outermost boundaries of its constituent parishes. This, however, ignores s. 50 of the same Act, repealed by the Local Government Act, 1933, which said that the first council was to be elected for " the county at large as bounded at the passing of this Act for the purpose of the election of members to serve in Parliament for the county." One effect of this was to bring extra-parochial places (of the ordinary sort) into the administrative county. Did it have any other and wider effect? Or, to put the question in another way, what was (or is) the county at large? In 1888 this must have looked more like an academic question than it does today; there are, for instance, strips or sheets of water, admittedly not within any parish, about which nobody would have greatly troubled in the old days, but over which it may—according to modern ideas—be proper that some landward authority should now exercise statutory powers. Even before 1888 there had been a grim reminder that this might from time to time be necessary: *see Woolwich Overseers* v. *Robertson* (1881) 45 J.P. 766, which led to the enactment of the Burial of Drowned Persons Act, 1886. What would happen now, if some offence cognizable by justices (not being within the definition of an " offence " in the Territorial Waters Jurisdiction Act, 1878) were committed by a person in a boat or swimming just below low water mark in water to which s. 46 of the Summary Jurisdiction Act, 1879, does not apply? The county justices hold their commission (*see* s. 10 of the Justices of the Peace Act, 1949) for the administrative county. Can they entertain a charge? Or, turning from the judicial to the administrative field, suppose (to take a possible example) that fire broke out on board a ship at that spot in the Thames where *The Princess Alice* sank? As will be seen from our report of that case, the ship sank well below low water mark, roughly half way between Kent and Essex. The whole and sole point of the decision was that this spot was not " sea " within the meaning of that word in the Burial of Drowned Persons Act, 1808, but certainly it was not land, and the case decided nothing about the boundary of any jurisdiction. What would have been the answer if the court had had to determine (let us say) whether the deck officer in charge when the disaster occurred, or the pilot if a pilot was on board, could be charged with manslaughter before a Kentish jury? In *R.* v. *Keyn* of which more, *infra*, a negative answer had been given ten years earlier, when a collision had occurred not far from the same spot; would this answer have been the same if both banks of the Thames had at that place been in the same county? And what is the relation (if any) of the negative decision of the Court for Crown Cases Reserved in *R.* v. *Keyn* to the problem which might be raised today—say by way of application in the Chancery Division to restrain the county council of a maritime county from spending money on a floating fire engine, to be used in extinguishing fires among ships lying in or traversing the waters bordering its coasts—in a case first (let us say) of an unindented coast line; second, an inlet like the Humber (or the Thames outside the county of London), which divides two counties; and thirdly an inlet like Southampton Water, which as shown on the map can without misuse of language be said to be wholly within a single county, but may or may not be, as a matter of law, within the county at all, or may (perhaps) be in the old geographical county but not the modern administrative county? It is rather remarkable how little real authority exists upon these questions which, in a maritime nation such as England has been for centuries, must have cropped up often in practice. There is one specific decision not apparently reported but a good deal spoken of in later cases, about the Solent, *viz.*, *The Lord of the Isles*, referred to in *The Public Opinion*, 2 Haggard at p. 402; one about the Humber, and two about the Bristol Channel; some judicial *dicta*, and a good deal of textbook statement, much of it far from clear.

We propose to examine such authorities as we have been able to find, upon the question whether any tidal water beyond the foreshore lies with a county. As might be expected, most of the judicial decisions given and the statements made by old text book writers related to conflict between the Admiralty Court and the King's Bench (roughly the sea and the land), and it is not always stated upon what basis the King's Bench (which on the whole had the better of it, and was certainly luckier in getting its victories put on record) asserted jurisdiction. Thus in *R.* v. *Marsh* (1615) 3 Bul. 27, in the middle of a case in the King's Bench, where *habeas corpus* was sought for a man arrested on a charge of piracy at sea, one finds: " The Court was then informed that in the Court of Admiralty they had proceeded to trial against divers for robberies done upon the river of the Thames. Coke *& curia*. If this be so, this is unjustly done by them for they have no such jurisdiction, this being done *infra corpus comitatus*." This does not show how far down the stream the *corpus* extends. Hale's *Pleas of the Crown*, vol. 2, p. 12 (in edition of 1800) not only says that tidal waters below low water mark may be within the county, but goes on to say that, even if such water is not within a county, a jury from the county can be summoned in the King's Bench. In the footnotes to *Hale* there are several decided cases, where it is not made clear whether the King's Bench successfully asserted jurisdiction upon the ground that water was within the county or upon the ground that (even if it was not) there was an inherent jurisdiction both to try the case and to call upon jurors from the county to take part in the trial. East's *Pleas of the Crown* (vol. 2, p. 802) follows Hale's *Pleas* and quotes also from Hale's *De Jure Maris* as follows: " That arm or branch of the sea which lies within the *fauces terrae* where a man may reasonably discern between shore and shore is, or at least may be, within the body of the county." East continues: " Where there is any doubt the jurisdiction of the common law ought to have preference." Similarly, Wood's *Institutes* at p. 496 says: " the Admiralty Court hath jurisdiction to determine all maritime causes arising wholly upon the sea out of the jurisdiction of a county . . . If the water is within a county the common law claims jurisdiction." This sort of statement, like Coke's remark in *R.* v. *Marsh*, *supra*, is not much help, because it does not show how much water is within a county. The most one can say is that such passages at any rate recognize the legal possibility; East's quotation from *De Jure Maris* is in point: note how he says " at least may be," and " the common law ought to have preference." Even so, it was strongly suggested in *R.* v. *Keyn* (1876) 2 Exch. D. 63 (by Sir Robert Phillimore at p. 67) that Hale had gone too far, and that no court had jurisdiction below low water mark, unless that of the admiral. It was the decision of the Court for Crown Cases Reserved in this case that led to the Territorial Waters Jurisdiction Act, 1878, which does not help with the problem we are discussing. In *R.* v. *Forty-nine Casks of Brandy* (1836) 3 Haggard 257, Sir John Nichol had said: " No person ever heard of the land jurisdiction of the body of a county which extended to three miles from the coast." It would be pleasant to recall Sir Robert and Sir John from their retirement, to form a Divisional Court for hearing a case stated on the charge we imagined earlier, of a minor offence by a swimmer or a boatman, where the point of law was whether the act complained of occurred within a county—especially if Sir Alexander Cockburn could be got to preside over the Court, and reminded of his two judgments cited *infra*.

The decision in *R.* v. *Cunningham, Brown and Summers* (1859) 28 L.J. M.C. 66 is referred to in the text books (and in the later decision to be mentioned below) but, as with the quotation from

Hale's *Pleas of the Crown*, it is fair to say that there is ambiguity about it. In that case a felony was alleged to have been committed on board a ship lying in Penarth Roads about three-quarters of a mile from the Welsh mainland : it was held in the Court for Crown Cases Reserved that the offence had properly been tried at the county assizes for Glamorgan. The reporter's headnote to the case says that : " The Bristol Channel between the shores of Glamorganshire and Somersetshire, where it is about ten miles across and where the one shore is visible from the other on a clear day, is within the bodies of the counties by which it is bounded. *Therefore* (italics ours), where a felony was committed on board a ship in this part of the Bristol Channel, about three-quarters of a mile from the Glamorganshire shore, it was held that the offence was committed within the body of the county of Glamorgan." If this reporter's headnote could be taken as correctly stating what the Court for Crown Cases Reserved had decided, it would pretty well settle the case for almost all waters which may be in doubt. Unfortunately for our present purpose, when the alleged offence was committed the ship was lying between the Welsh mainland and the Island of Flat Holm, which was stated in the judgment of the Court to be part of the parish of Cardiff and of the county of Glamorgan, poor rates being paid there to the Cardiff overseers. There was thus enough ground for holding the ship, though she was a quarter of a mile below low tide mark, to have been within the county at the crucial time, without concluding that the whole of the Bristol Channel between Glamorgan and Somerset at this point is within one county or the other. Even though two of the judges in the course of the argument suggested to counsel that this must be so, and one of them asked : " is not the sea between the Isle of Wight and Hampshire all within the county of Southampton ?" —a query which seems to show that *The Lord of the Isles* was deeply bitten into judicial mentality—it was possible to support the conviction at Glamorgan Assizes in *R.* v. *Cunningham*, either by reason of Hale's view of the law that the Queen's Bench had an inherent jurisdiction (and so could call upon a county jury even though the water was outside the county) or by reason of a finding of fact that the county boundary here lay not at the mainland shore of Glamorgan but at the southern shore of the Island of Flat Holm. And the latter could be the fact, without involving a conclusion that the same was true of the Isle of Wight. In other words, the actual decision does not go the full length of the reporter's headnote, and his use of " therefore " in the headnote seems certainly wrong. It is in justice to the reporter proper to mention that in course of his judgment in this case Cockburn, C.J., did say : " the whole of this inland sea between the counties of Somerset and Glamorgan is to be considered as within the counties by which its several parts are respectively bounded," but in the comparatively recent case of *The Fagernes* [1927] P. 311, where there had been a collision in the Bristol Channel approximately half way between the Welsh and English coasts, the Attorney General at p. 315 pointed out, and Bankes, L.J., at p. 322 stated at some length, that the words of Cockburn, C.J., just quoted went beyond what was needed to cover the facts in *R.* v. *Cunningham*—though this does not mean that he was necessarily wrong, or that his remarks are irreconcilable, upon local facts, with what he said later in *R.* v. *Keyn*, *supra*, at pp. 159—238 of the report cited.

In *The Fagernes*, Hill, J., in the court of first instance had relied upon what Cockburn, C.J., said in *R.* v. *Cunningham*, notwithstanding that the *locus in quo* before him was much further down channel, but upon appeal the Attorney-General attended at the request of the court, and stated on the instructions of the Home Secretary that the place where the collision occurred was not within the territorial sovereignty of His Majesty. The Court of Appeal accordingly decided that no English court had jurisdiction. Apart from its negative character, this case enables us to add one practical gloss to what Hale in *De Jure Maris* had copied from Coke, who lifted it from a case decided in 8 Edward II, about being able to " discern reasonably " between shore and shore. American cases are cited, expounding this last to mean that persons moving on one side can with the naked eye be seen by persons on the other side. This is obviously quite different from the test inferentially suggested in the headnote to *R.* v. *Cunningham*, *supra*, of being able to discern the shore itself on a clear day.

To turn back again to the text writers, Blackstone at p. 106 of vol. 3 of the *Commentaries* says that : " The Admiralty Courts have jurisdiction and power to try and determine all maritime causes . . . arising wholly upon the sea and not within the precincts of any county, for the statute 13 Richard II, c. 5, directs that the admiral and his deputy shall not meddle with anything but only things done upon the sea and the statute 15 Richard II, c. 3, declares that the court of the admiral hath no manner of cognizance of any contract or of any other thing within the body of any county either by land or by water." Note here again, for what it is worth, the reference to water within the body of a county : we say " for what it is worth," because Blackstone is simply copying Coke.

At p. 113 of vol. 3 of the Institutes, speaking of the jurisdiction to try pirates, Coke had said that between high and low water mark of the sea the admiral has jurisdiction so long as the sea flows, and not otherwise, but " this *divisum imperium* does not apply to a port, haven, river, or creek which is within the body of a county." This does not carry us far ; it amounts only to showing that in Coke's opinion water below low water mark could be within the body of a county. (We shall however see from what follows that even the old common lawyers did not dispute the right of the Admiralty Court to try murder and mayhem when alleged to have been committed on board a ship below low water mark : the dispute between the two courts, in which the King's Bench got the better of it, chiefly through the weapon of prohibition, related to other types of proceedings ; more particularly, one may suppose, to cases in which some worthwhile fees would be involved, *i.e.*, predominantly civil actions.) If the collision in which *The Princess Alice* sank had, instead of or as well as *Woolwich Overseers* v. *Robertson*, *supra*, led to an action by the London Steamboat Co., Ltd., against Messrs. Gray & Co., this would have been heard under modern statutory authority in the Admiralty Division. Had such an action been brought in Coke's day, the common law would have striven to prevent the Admiral's Court from entertaining it ; it is interesting to conjecture whether the King's Bench would have notionally extended Kent so far into the river, and entertained the case accordingly itself.

At p. 137 of vol. 4 of the Institutes, Coke says (in c. 22, headed " The Court of the Admiralty ") :

> " By the statute of 15 R.2. cap. 3. it is enacted and declared, That the court of the admirall hath no manner of conusance, power nor jurisdiction of any manner of contract, plea, or querell, or of any other thing done or rising within the bodies of the counties, either by land or by water, and also of wreck of the sea, but all such manner of contracts, pleas, and querels, and all other things rising within the bodies of the counties as well by land as by water, as is aforesaid, and also wreck of the sea shall be tried, termined, discussed, and remedied by the laws of the land, and not before nor by the admirall nor his lieutenant in no manner. Nevertheless of the death of a man, and of a mayhem done in great ships, being and hovering in the main stream of the great rivers only beneath the points of the same rivers, and in no other place of the same rivers, the admiral shall have conusance. This latter clause giveth the

admirall further jurisdiction in case of death and mayhem (with neither of which we ever meddled), but in all other happening within the Thames, or in any other river, port, or water, which are within any county of the realm (as all rivers and havens be, as hereafter shall manifestly appear), by express words of this act of parliament, the admirall or his deputy hath no jurisdiction at all. Wherein it is to be observed, how curious the makers of this statute were to exclude the admirall of all manner of jurisdiction within any water which lyeth within any county of the realm."

The important part of this passage for our present purpose would have been the parenthesis (" as all rivers and havens be, as hereafter shall manifestly appear ") if only Coke had made good his promise, of showing that, or why, they are all within some county. In reality, however, this is a characteristic specimen of Coke's disingenuous argument, making his hearers think evidence is coming which he never gives. He goes on to quote a great many decided cases from earlier centuries, no one of which shows how far a county's boundary extends ; the following are the most worth noticing in our present context. At p. 140 of the same volume he gives : " 8E.2. tit. coron. 399. It is no part of the sea, where one may see what is done of the one part of the water, and of the other, as to see from one land to the other, that the coroner shall exercise his office in this case, and of this the country may have knowledge ; whereby it appeareth that things done there are triable by the country (that is, by jury) and consequently not in the admirall court." At p. 141 he says : " 46 E.3. tit. Conusans 36. An action of trespass was brought for taking of a ship in the Haven of Hull against certain persons ; the maior and the bailiffes of Hull demanded conusance by the charter of the King granted unto them, that the citizens and burgesses of Hull should not be impleaded *alibi de aliquibus transgressionibus, conventionibus et contractibus infra burgum, &c. quam infra burgum.* And the conusans was granted ; which proveth that the Haven of Hull where the ship did ride was *infra burgum de Hull*, and by consequence *infra corpus comitatus*, and determinable by the common law, and not in the admirall court." And again on the same page : " Stanford, lib. I.pl. cor. fo. 51.b. If one be slaine upon any arme of the sea, where a man may see the land of the one part and of the other, the coroner shall inquire of this, and not the admirall, because the country may take conusance of it, and doth vouch the said authority of 8E.2. whereupon he concludeth in these words. So this proveth, that by the common law before the statute of 2 H.4. &c. the admirall had no jurisdiction but upon the high sea, which only authority were sufficient to overrule all the said questions. For hereby appeareth, that the jurisdiction of the admirall is only confined by the common law to the high sea, and agreeth with all the former book cases and acts of parliament."

We thus have repeated opinions in the old books supporting the proposition that a piece of salt water below low water mark can be within a county, if there is land of the same county (or another county) within such a distance that the movements of a man on one shore are discernible with the natural eye from the other shore. This last is a test in fact, about which it might be necessary to obtain evidence in particular cases. There is also a positive judicial decision that the Solent is within the old county at large, of Southampton. In later cases this has been reiterated, and, despite its not satisfying the test just given, there seems no reason to doubt that this is still the legal position in that case.

Where the sea below low water mark is not *inter fauces terrae* (*e.g.*, westward of the Solent and eastward of Spithead) it seems that it cannot be brought within a territorial jurisdiction attaching to the county or within the inherent power of the King's Bench throughout the realm : when the three mile limit had been taken into English law from continental writers upon international law (*see*, for example, *per* Brett, J.A., in *R.* v. *Keyn, supra* at pp. 124 to 149, where its history is exhaustively examined) it was being simultaneously said, *e.g.*, by the great authority of Sir John Nichol, quoted earlier, that the county did not stretch so far, at any rate, as three miles out. It is a pity in the light of modern needs, that there is so little positive material to show whether a county council can function, and if so how far, below its foreshore, save in the Hampshire case.

MISCELLANEOUS INFORMATION

INSTITUTE OF MUNICIPAL TREASURERS AND ACCOUNTANTS (INCORPORATED)

At the sixty-sixth annual general meeting and conference of the Institute of Municipal Treasurers and Accountants (Incorporated) held at Eastbourne recently, the president, Mr. William Adams, F.I.M.T.A., F.S.A.A., in his address covered a review of the past half-century of local government and a statement of the problems which at present face local authorities. He briefly sketched the rise of the all-purpose local authority to its peak in 1929 and then followed its subsequent decline through the recent years, which have seen the loss of one function after another to specially constituted *ad hoc* bodies, and the increasing dependence of local finance on grants from the central government. During this half-century, local government had played its part in the development of social services and the public utilities, and during the second World War had successfully operated major war services in addition to maintaining the normal services on which the stability and productive power of the home front depended. Since 1945, however, there had been a rapidly accelerating movement towards larger areas and increasing central control, until the present position had been reached in which many of the smaller authorities seemed in danger of atrophy through disuse and local government in general was treated as very much the underling of the central government departments.

The President then went on to examine the two problems, the failure to solve which he considered was largely the cause of the present state of affairs. The first was that of Boundaries and Functions. The main difficulty here was that no local authority was willing to sacrifice autonomy for the greater good of local government as a whole, with the result that excess of civic pride was largely responsible for the failure to adapt the structure of local government to the changing tempo of events. The efforts of the Boundary Commission were the only serious attempt to face this problem and they came to an end when the conclusion was reached that effective units of local government could not be formulated without the re-allocation of functions. The problem still awaited solution, for the Government's intention, declared in 1949, to undertake a general review had not been translated into action.

The second problem, the President considered, was that of financial resources. During the fifty years under review rates had increased six-fold from £43 million to £270 million ; grants twenty-two fold from £13 million to £284 million and national tax revenue thirty-four fold from £110 million to £3,668 million ; the increasing Government grants had meant increasing Government control. This inelasticity of rates was caused by the stability of rateable values, partly as a result of de-rating under the 1929 Act. In spite of the defects of rating it was the only source of revenue under local control and should be preserved. It seemed necessary, however, to supplement it by considering other possible sources of revenue. The President indicated various possibilities, among which were a local income tax levied nationally ; the assignment of entertainments and purchase tax ; public utility profits, and the taxation of site values. All these were probably open to objection, but the time was ripe for the examination of such suggestions with the aim of equity in the financial relationships of local government both with the central government and with each other.

The failure to solve these two problems was, the President suggested, very largely responsible for the decline of local authorities and the formation of *ad hoc* boards. It was questionable, however, whether this development did not create more difficulties than it solved. The

British system of local government had an indispensable role to play in compensating for the remoteness of the central administration and it had solved to a large degree the problem of "Public Accountability." Review and reform of its structure were urgent tasks which would be well worth while.

Sir Edgar Sylvester, K.B.E., F.C.A., chairman of the Gas Council, presented a paper on "The Management and Control of Public Corporations." His paper (which was read by Mr. W. Bailey), opened by defining a public corporation as an organization created by Act of Parliament with members appointed by a Minister or by procedure laid down by Parliament, free from day to day Parliamentary control, financially autonomous, and required to match expenditure with income, taking one year with another. This form of organization, which was first put to nation-wide use with the creation of the Central Electricity Board in 1926, followed by the B.B.C., and the L.P.T.B., was widely used in post-war years for the nationalized industries.

A comparison was then made of the methods of management used in coal, transport, electricity, gas, Imperial Chemical Industries and Lever Brothers. Coal was highly centralized, under the National Coal Board. The British Transport Commissions, five in number, had a general financial responsibility and was responsible for integrating transport, but the executive power was in the hands of the executive bodies constituted for the different types of transport. In the case of Electricity, Parliament created not only the British Electricity Authority but also the fourteen Area Boards; financial responsibility still remained with the central authority. For gas the area boards had almost complete independence, the Gas Council, made up of area board chairmen under an independent chairman, being responsible only for the raising of capital. In those four industries there was, therefore, a variation from the high degree of centralization with coal to the almost complete local autonomy of the gas boards. In the industrial firms, I.C.I. had twenty directors, six of whom covered the main types of activity of the firm and seven of whom had functional responsibilities. Eleven management divisions under division boards had considerable local autonomy. Lever Brothers had a high level special committee of four responsible for major policy divisions and co-ordination, while at a lower level there were four groups each responsible for part of the firm's activities. In addition there were functional control departments for finance, marketing, etc. Several of these organizations followed the system of departmental executive committees with a functional finance committee, as used by local authorities.

After considering these examples of organization, Sir Edgar concluded that centralization and decentralization were not opposed policies, but methods which each had its rightful scope. Organization had to grow out of the needs of the concern and not out of pure theory. Accountancy was an example of a function which could often be centralized as regards policy but decentralized in operation. The most important factor was frequently not the formal method of organization, but the spirit of team work.

In the case of the industrial concern, control was exercised by the shareholders and the legislative requirements were not onerous. Under nationalization, however, stricter control was necessary. In the gas industry the mechanism of control was laid down by the Gas Act. The Minister of Fuel and Power was responsible for the appointment of the members of the area boards and gas council, and also had power to give such general directions to the boards and council as appeared to him necessary in the public interest. The boards and council had to give the Minister all the information he might reasonably require. Each board and the council had to prepare annual statements of account which had to be audited by auditors appointed by the Minister and laid before Parliment. They were also required to present an annual report to the Minister, and these reports were very full and provided an opportunity for Parliamentary debate at which all aspects of the industry could be discussed. Consumer control was affected through the gas consultative councils which had direct access to the Minister, while, of course, public opinion expressed in the press had a considerable effect. The employees' point of view was also covered by the Act, which laid down that appropriate organizations had to be consulted on matters affecting employees.

In conclusion Sir Edgar expressed the opinion that in the gas industry at present there was ample provision for public accountability at least as far as ordinary running was concerned, though there might be scope for general reviews at intervals of not less than seven years. The purpose of the nationalized industries was to provide a service, and management and control must be directed to that end.

Mr. Stanley Wm. Hill, A.I.M.T.A., financial adviser to local authorities, spoke on "Implications of Re-valuation." Mr. Hill chose for the subject of his address the implications of the re-valuation for rating which is now taking place and which it is intended should be completed so that the new valuation lists can be brought into force on April 1, 1953. He first reviewed the history of rating during this century, and pointed out that the two re-valuations which took place under the Rating and Valuation Act, 1925, did not secure uniformity over the country as a whole, partly owing to the rather complex effects of rent control and partly owing to the existence of different standards in different areas. Nevertheless there had been every hope that the third re-valuation, which was to have taken place in 1939, would have brought about a fair degree of uniformity within the administrative county, and this would have been adequate had it not been for the fact that the grant structure of the Local Government Act, 1948, depended on relative rateable values. This Act therefore transferred valuation to the Inland Revenue and also in Part IV laid down a new and elaborate code of valuation on which the re-valuation is to be based.

After agreeing that the transfer of valuation to the Inland Revenue was inevitable if uniformity was to be obtained, Mr. Hill went on to examine in detail the new valuation code, which provides that the following types of property are to be valued by different methods: (*i*) Pre 1919 dwelling-houses, post 1918 private enterprise flats and maisonettes, and large private enterprise houses; (*ii*) Agricultural dwellings; (*iii*) Post 1918 local authority houses and flats; (*iv*) Smaller post 1918 private enterprise houses; (*v*) Other property.

The valuation of non-dwelling house property was to remain on the basis of actual rental value, but dwelling house values were to be generally related to pre-war prices, classes *i* and *ii* being based on 1938 rents and classes *iii* and *iv* on 1938 capital costs, with the exception that in the case of smaller private enterprise houses the 1949 site value would be used. This acceptance of pre-war standards of value was unrealistic and threatened to impair the whole rating system, especially at a time when the value of money was falling, and the result could only be to bring local government into disrepute. In addition the division of houses into classes meant that, for example, identical houses in the same area built by a local authority and private enterprise might have values differing to a considerable amount. In the application of the basis to post 1918 houses, hypothetical 1938 costs of construction had been laid down which varied widely from area to area and indeed often varied within the same administrative county. The application of the scales was a matter for a highly skilled valuer, and was quite beyond the capacity of the average ratepayer. The general effect could only be a complete lack of uniformity, both between areas and between similar types of property in the same area.

Mr. Hill then turned to the effect on rates and rateable values, and estimated that rateable values would increase on the average by twenty-two *per cent.* leading to an average national decrease in rates, other things being equal, of 3*s.* 3*d.* in the £. The increase would not be spread uniformly over all classes of property, the increase for industrial and commercial property being fifty-eight *per cent.*, for dwellings fourteen *per cent.*, and for miscellaneous property eleven *per cent.* If those estimates were correct, there would be a shift in the rate burden from dwellings and miscellaneous property to commercial property, as industrial property was already largely relieved of rates. These figures were national averages; in any particular area the actual change would depend on a number of factors including the degree of previous under-assessment and the effect of rent control, and whether the authority was in receipt of equalization grant. In the case of those authorities receiving grant the new rate poundage would depend directly on the national figure of rateable value per head, and if the twenty-two *per cent.* increase estimated was correct, the rates in those authorities would fall by eighteen *per cent.* In the case of county districts the effect would be more complicated as the district rate had to be considered in addition to the county precept. In some districts there might well be a substantial increase in rateable value unaccompanied by any considerable decrease in rates.

Considering total rate burden, Mr. Hill concluded that the total burden on the ratepayers of a county borough or county would be increased by the extent to which the increase in rateable value falls short of the national increase and *vice versa*, except in authorities not in receipt of grant, where it would remain static. In county districts, however, the variation in rate burden might be quite disproportionate to the increase or reduction in the rateable value of the district. The alteration in rate burden on individual ratepayers might be very substantial.

In conclusion, Mr. Hill said it was evident that in future the Exchequer Equalization Grant could not function equitably, and the Minister of Health's aim that persons of similar means should make roughly the same contribution to local expenditure could not be attained. This fact, and the adherence to dead values, constituted a real threat to local government which could only be met by a reversion to the principles of the Rating and Valuation Act, 1925.

THE POTENTIAL RESPONDENT

I hope that I shall never find
My wife can Piddington my mind.

J.P.C.

REVIEWS

Stone's Justices' Manual. Eighty-third edition. Edited by James Whiteside. London : Butterworth & Co. (Publishers) Ltd., Shaw and Sons, Ltd. Price : Thin edition 77s. 6d., post free, Thick edition 72s. 6d., post free.

It is difficult for any reviewer, especially for one who has been accustomed to rely on *Stone* over a long period of years, to say anything new about it. Its excellence is so well known and its accuracy so well maintained by a succession of experienced and learned editors, that most practitioners and officials rightly take it for granted that every new edition is a necessity.

This latest edition, says the editorial preface, brings the law up to October 26, 1950. This may seem rather long ago, but it must be recognized that it is quite impossible to produce in a few weeks or months a work of the size and scope of *Stone*, and therefore there must always be some time lag between completion and publication. Once the reader recognizes this, and takes care to look for possible changes in the law since completion, the value and reliability of the book remain unimpaired. As we said in relation to the previous edition, users of *Stone* must on no account fail to read, and read carefully, the learned editor's preface. In this he not only calls attention to new matter which is included, but also refers to new law which could not be included because of having been passed after the printing had been taken in hand. In fact, over twenty new statutes are dealt with in the text but such important Acts as the Maintenance Orders Act, 1950, and the Diseases of Animals Act, 1950, are not included, but will of course be in the next edition. So far as the Justices of the Peace Act, 1949, is concerned, the convenient course has been adopted of inserting in the text only those sections which have been brought into force, and relegating the remainder to the end of the work. It is pointed out that s. 3 of the Marriage Act, 1949, removes a long standing doubt by enacting that the consent of the court to the marriage of an infant is unnecessary where the marriage is to be after publication of banns. The section also provides that no consent is necessary in the case of an infant who is a widower or a widow. The value of the consolidating Vehicle (Excise) Act can best be realized from the fact that it repeals and replaces provisions scattered in over twenty statutes. In the brief references he makes to outstanding changes in Statutes and Regulations, the editor helps the reader to avoid pitfalls, and that is one reason why we attach so much importance to the preface. Over 100 new decisions are referred to, and here again much help can be derived from Mr. Whiteside's observations on some of the most important. Thus, he not only gives the effect of the decision in *R. v. Middlesex Quarter Sessions, Ex parte Director of Public Prosecutions* [1950] 1 All E.R. 916, but also observes that the principle also applies to cases under s. 20 of the Larceny Act, 1916, except subss. (1) (*iv*). Reference is also made to some of the matrimonial cases decided in the Superior Courts which deal with matters of principle important to justices hearing domestic proceedings.

In thanking correspondents, Mr. Whiteside says that some of them have enabled him to correct small errors. Anyone who has had *Stone* in constant use must realize two facts; first, the endless opportunities for overlooking small mistakes, and second, the extremely small number actually to be found.

Mr. Whiteside says he has now been solely responsible as editor for five years. He adds that from now he will be joined in the editorship by Mr. J. P. Wilson, solicitor and clerk to the Sunderland Justices. Mr. Wilson is already well known as editor of *Oake's Magisterial Formulist* and as a much valued member of the Justices' Clerks' Society, of which he is president. With the editorship in the hands of two clerks to justices of such reputation, *Stone* will remain the indispensable and trustworthy companion of all those whose work lies in the magistrates' courts.

A Guide to Compulsory Purchase and Compensation. By R. D. Stewart-Brown. London : Sweet & Maxwell Ltd. Price 10s. 6d. net.

In 1948 the same publishers brought out a paper covered handbook in their series of *Current Law Guides*, the chief object of which was to review the law of compulsory purchase in the light of legislation since the end of hostilities, particularly the Town and Country Planning Act, 1947. It is understood that this guide is now out of print; the present work, expanded from it, is intended to serve as a rather more complete introduction to the subject, for the benefit of legal practitioners and others whose work touches on compulsory purchase. It still does not profess to be more than an introduction, and therefore does not compete with the major works upon the same subject, or with parts of such a book as *Hill on Town and Country Planning*, where this has to do with compulsory purchase. Since the guide appeared in 1948 the Lands Tribunal Act, 1949, has been passed, so that the procedure has needed redescribing. The topic is complicated, and at the same time very important to all members of the legal profession, especially (perhaps) to that large section of our own readers who may be concerned with acquiring properties for local authorities under various statutes. The learned author begins by describing the powers generally, from the Lands Clauses Consolidation Act, 1845, onwards and proceeds to set out the subject matters (land, interests in land, and water rights) which can be compulsorily acquired. After this, he treats chapter by chapter of the procedure to be followed in serving notices, taking possession, and assessing compensation. We have for some time thought that compulsory purchase (and compensation upon compulsory purchase) would form a subject eminently suitable for a Consolidation Act but apparently the Statute Law Committee have so far thought otherwise. Pending consolidation of the law, which has now been cut about by so many modern statutes, a small work of this sort will be a useful guide—although there are some difficulties not touched on, and, plainly, seventy-six pages of text with another twenty pages of tabular appendices cannot pretend to be more than a convenient handbook, for showing the practitioner where to look for the provisions which he needs to study.

Parliamentary Sovereignty and the Entrenched Sections of the South Africa Act. By D. V. Cowen. Cape Town and Johannesburg : Juta & Co. Ltd. Price 10s. 6d. net.

This is a pamphlet of no more than fifty pages by the Professor of Law in the University of Cape Town. As he says in his preface, fundamental legal questions relating to the doctrine of parliamentary sovereignty are involved in any serious inquiry into the efficacy of the entrenched sections of the South Africa Act. In the last two or three years there has been a flood of papers, letters, and speeches, throughout the English speaking world (and for all we know elsewhere)—normally hostile to the present South African Government, and very commonly tendentious. Immense harm is capable of being done, by those who treat from a sentimental point of view the problems facing that Government, in its attempt to construct a firm foundation for the future relationship of its diverse populations. No other country has the same problems as South Africa, with its European, African, and Asiatic populations, and it is valuable that the constitutional questions which are involved in the Government's attempts to solve those problems should be looked at, without predetermined bias, from a legal point of view. Professor Cowen reaches conclusions which on the whole are against the practicability of carrying out (with complete regard for constitutional obligations) the policies of the South African Government, in regard to African and Asiatic members of the community. For all that, the pamphlet should be helpful to that Government, in that the issues involved are properly examined in the light of law, not of *a priori* notions, and its perusal should help responsible persons in Great Britain. It is so difficult for readers of the newspapers here to obtain any fair view, of the problems with which South Africa is coping at the present time, that any of our readers who feel the need to inform themselves about those problems can be advised to obtain the present work.

The History of Capital Punishment. By George Riley Scott. London : Torchstream Books. Price 21s. net.

Most people are prepared to offer a decided opinion on the desirability or necessity of the death penalty, but very few can justify their opinion by anything more than a sort of impulse, an instinctive feeling that their view must be right. Now, in fact, the question bristles with difficulties, and there are cogent arguments on both sides. Newspaper polls and the like are of little value, because they are based mostly on uninformed opinion. What is wanted is a supply of facts, which can be examined and be made the basis of argument. This book provides facts in abundance, in so much abundance, indeed, that some readers may think that so much description of the horrors and inhumanities of hundreds or even thousands of years ago, and so many horrific illustrations are hardly necessary to a study for the problem today. However, it has to be remembered that Mr. Scott set out to write a history, and that he was evidently determined to complete his task to the full, however much research and labour it involved.

The book is more than a history. It is a careful and honest examination of the evidence that can properly be adduced on both sides of the controversy about the death penalty. The experience of our own and other countries, the position in countries where capital punishment has been abolished, the various theories of punishment, the law as to insanity and responsibility, the possibility of introducing different grades of murder as well as the different methods of inflicting the

extreme penalty, are all discussed. The philosophical and moral questions involved are recognized, and the discussion is always free from any sign of a desire to belittle the arguments of one side or the other. It is clear enough that Mr. Scott is in favour of abolition, but he has not failed in the duty of presenting his arguments dispassionately and of admitting the difficulties in the way of some of them. The author writes with obvious sincerity and with the will to proclaim the truth as he sees it.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Lynskey and Devlin, JJ.)

June 4, 13, 1951

R. v. GUNEWARDENA

Criminal Law—Evidence—Discrediting witness—Limitation on evidence in examination-in-chief—Evidence as to mental state of witness to be discredited.

Practice—Joint trial—Statement by prisoner implicating co-prisoner—Duty of prosecuting counsel in putting in statement—Duty of judge.

APPEAL against conviction.

The appellant was convicted at the Central Criminal Court before Hilbery, J., of manslaughter and was sentenced to three years' imprisonment. The appellant, who was a medical man, was tried together with a Mrs. H. The case for the prosecution was that a pregnant woman had died as a result of an operation to procure a miscarriage having been performed on her by Mrs. H and that the appellant was an accessory before the fact. One D, a brother of Mrs. H, was called by the prosecution to prove that the appellant had attempted to bribe Mrs. H to withdraw a statement which she had made and which incriminated the appellant. Defending counsel desired to call a doctor to prove that D was suffering from a particular mental state, the effect of which would be to render him unworthy of credit on oath, but Hilbery, J., ruled that the evidence was inadmissible. The whole of Mrs. H's statement was put in evidence by the prosecution at the trial, but Hilbery, J., in his summing-up warned the jury not to regard it as evidence against the appellant.

Held: (i) that the rule was that any witness may be discredited by the opposite party by calling a witness who swears that he, from his knowledge of the first-named witness, believes him to be unworthy of credit on oath, but that such a witness in examination-in-chief may not give reasons for his belief, though he may be asked for his reasons in cross-examination and his answers in cross-examination cannot be contradicted, and that under this rule the evidence of the doctor regarding D's condition had rightly been excluded; (ii) that counsel for the prosecution, in putting in a statement of the kind referred to, was not under any duty to select certain passages and omit others, and that the jury had properly been warned by the judge of the effect of the statement.

Appeal dismissed

Counsel: for the appellant, *Pritt, K.C.*, *Gunewardena* and *Eric Myers*; for the Crown, *Christmas Humphreys*.

Solicitors: *Darracotts*; *Director of Public Prosecutions*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Lynskey and Devlin, JJ.)

June 14,1951

PENTECOST AND ANOTHER v. LONDON DISTRICT AUDITOR AND ANOTHER

Local Government—Audit—District auditor—Objection by ratepayer—Alleged defective work—Surcharge of amount of loss caused by negligence—Test to be applied—Local Government Act, 1933 (23 *and* 24 *Geo.* 5, *c.* 51), *s.* 228 (1) (*d*).

APPEAL under s. 229 of the Local Government Act, 1933.

Two ratepayers of the borough of Wandsworth, James Harold Pentecost and George Albert Allsop, appeared at the audit of the borough council's accounts by the district auditor under s. 226 (1) of the Local Government Act, 1933, and objected to certain items in the accounts on the ground that they represented payments in respect of work not done, or improperly done, by certain contractors. Their objection was that, if the council had exercised proper supervision, or if their technical employees, particularly the clerks of works, had not been guilty of lack of care, either the payments should not have been made or repayments should have been made by the contractors in respect of improper work. Having heard the objections, the district auditor refused to surcharge either the council or its officials who had been responsible for passing the work. Called on under s. 226 (2) of the Act to state his reasons of his decision and to put his decision into writing, he stated: "After mature consideration of the evidence, I have come to the conclusion that there have been isolated instances of defective work which have escaped the notice of the council's technical supervising officers, but they do not appear to me to have been of an extent or of such frequent occurrence as to warrant any finding that, but for gross negligence on the part of the council's supervising officers, they would have been brought to light. The objections, therefore, fail." The ratepayers appealed on the ground that the district auditor had applied the wrong test, the test before he could surcharge one of the officials being, not gross negligence, but negligence.

By s. 228 (1) of the Act: "It shall be the duty of the district auditor at every audit held by him . . . (*d*) to surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred. . . ."

Held, dissenting from *obiter dicta* in *R.* v. *Browne* ([1907] 2 I. R. 505, 518) and *Davies* v. *Cowperthwaite* (102 J.P. 405, 406; [1938] 2 All E.R. 685, 689), that the district auditor had used the wrong phrase when he said "gross negligence," the test being negligence and not gross negligence, but that, as the facts found by him did not disclose even negligence, the result on his findings would have been the same if the correct test had been applied, and, therefore the appeal must be dismissed.

Counsel: for the ratepayers, *Collard*; for the district auditor, *Simes, K.C.*, and *Alan H. Bray*; for the borough council, *Maurice Lyell*.

Solicitors: *Seifert, Sedley & Co.*; *Sharpe, Pritchard & Co.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

June 14, 1951

R. v. JUDGE PUGH. *Ex parte* GRAHAM

Rent Control—Proceedings before rent tribunal—Application to county court for apportionment of rent—Duty of county court—Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 *and* 11 *Geo.* 5, *c.* 17), *s.* 12 (3)—*Landlord and Tenant (Rent Control) Act*, 1949 (12, 13 *and* 14 *Geo.* 6, *c.* 40), *s.* 1 (1).

APPLICATION for order of *mandamus*.

In September, 1950, the applicant, Graham, and another, who were tenants of two flats known as 20a and 20b Buckland Crescent, Hampstead, took proceedings before the local rent tribunal claiming that the rents were excessive and ought to be reduced. The case was put on the footing that the flats were two separate dwelling-houses which were first let after September 1, 1939. The tribunal decided that they had jurisdiction, and in the case of Graham's flat they reduced the rent from £200 to £125 per annum. After the decision of the tribunal, Graham believed that he had discovered facts which showed that prior to September 1, 1939, the two flats had been let as one dwelling-house, that nothing had been done to alter them structurally, and that for the purpose of the Rent Restriction Acts they were still one dwelling. He, accordingly, applied to Judge Pugh, at Bloomsbury County Court, under s. 12 (3) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, for an apportionment of the standard rent. The judge took the view that he was being asked to act as a court of appeal from the rent tribunal or to hold that the tribunal had no jurisdiction, and he pointed out that, if he gave a decision apportioning the rent, there would, apparently, be two standard rents, the first depending on his decision and the second on the decision of the tribunal. Accordingly, he declined jurisdiction, and the applicant obtained leave to apply for an order of *mandamus* directing the judge to hear and determine the application for apportionment.

Held, that the judge was wrong in treating matters as going to jurisdiction which were really matters of defence, and that where the decision of an inferior tribunal was relied on as conclusive it must be shown by the person relying on that decision that the tribunal which gave it had jurisdiction. It was, therefore, incumbent on the judge to try the matter, because, if it turned out that the two flats were in reality one dwelling-house which had been let before September 1, 1939, the tribunal had no jurisdiction and its decision was void for all purposes. The order of *mandamus* must, therefore, issue.

Counsel: for the applicant, *Charles Lawson*; for the respondent, *Bernard Finlay*.

Solicitors: *Richard Davies & Son*; *Crawley & De Reya*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

June 13, 1951

WILSON *v.* INYANG

Medical Practitioner—Use of title or description of "physician"—Honest belief in right—Reasonable grounds of belief—African in England for two years—Diploma from "institute of drugless therapy"—Medical Act, 1858 (21 *and* 22 *Vict., c.* 90), *s.* 40.

CASE STATED by a metropolitan magistrate.

Informations were preferred by the appellant, Wilson, charging the respondent, Inyang, with wilfully and falsely using the title and description of physician, contrary to s. 40 of the Medical Act, 1858. The respondent caused to be published in a weekly newspaper an advertisement in the following form: "Naturopath physician, N.D., M.R.D.P. Patients visited, also evening surgery for chiropody. For appointment." An address was given. The appellant was an African who had lived in England for two years. He had never been a medical practitioner, but before June, 1950, he had obtained the diploma of the Anglo-American Institute of Drugless Therapy. He had first undergone a course of instruction, which consisted partly of a correspondence course and partly of practical training, which was given at a clinic at Bournemouth, where there were about thirty beds for in-patients and an out-patients' department. He attended there for about six months, and then sat for an examination and wrote some six papers. He did not know whether or not the persons who instructed and examined him had professional qualifications, and he made no inquiries about the status or competence of the institute. After obtaining the diploma, he obtained a certificate of membership of the British Guild of Drugless Practitioners. The magistrate was of opinion that the respondent genuinely believed that he was entitled to describe himself as "physician," and that, being an African who had been brought up in Africa and had only lived in England for two years, he acted reasonably in believing that his course of instruction, diploma and membership of the guild qualified him so to entitle or describe himself. Accordingly, he dismissed the informations and the prosecutor appealed.

Held, applying and explaining *Younghusband* v. *Luftig* 113 J.P. 366; [1949] 2 All E.R. 72; [1949] 2 K.B. 354, that the question for the magistrate was whether the respondent had acted honestly, and though, in considering that question, he was bound to take into account the presence or absence of reasonable grounds of belief, the question whether the respondent had acted reasonably was not the deciding feature in the case. The magistrate in the present case had taken the proper considerations into account, and the court could not interfere with his finding of fact that the respondent had acted honestly. The appeal must, therefore, be dismissed.

Counsel: for the appellent, *Cumming-Bruce*. The respondent did not appear.

Solicitors: *Hempsons*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Roxburgh, J., sitting as additional judge.)

June. 8, 1951

THOMPSON *v.* EARTHY

Husband and Wife—Maintenance order—Undertaking by husband to allow wife to remain in occupation of matrimonial home rent free—Sale of house by husband—Right of purchaser to possession.

ACTION for possession of premises and damages for trespass and/or use and occupation.

In November, 1935, the defendant and her husband were married, and thereafter they lived in the house which was the matrimonial home, the freehold of which the husband owned. On July 25, 1946, the husband deserted the defendant, leaving her and the children in occupation of the house. On October 20, 1946, the defendant applied for an order for maintenance on the ground of the husband's desertion, and, on the husband's undertaking to allow the defendant to remain in the house free of rent and all other outgoings, he was ordered to pay her £1 a week and 5*s.* a week for each of the children. On June 17, 1950, the husband conveyed the house to the plaintiff. As the defendant continued in occupation after the sale, the plaintiff claimed from her possession of the premises and damages for trespass.

Held, the defendant had no legal or equitable interest in the house so as to be capable of binding it in the hands of a purchaser, and, accordingly, the defendant was a trespasser and must give up possession.

Counsel: *Michael Hoare* for the plaintiff; *Lionel Jellinek* for the defendant.

Solicitors: *Warmingtons*; *Reginald Johnson & Co.*

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

Lt.-Col. M. Lipton (Brixton) asked the Secretary of State for the Home Department what official steps were being taken to ensure that all magistrates were informed of a recent statement by the Lord Chancellor on the use of their power to remand persons in custody.

The Secretary of State for the Home Department, Mr. Chuter Ede, replied that he was causing a copy of the Lord Chancellor's statement to be sent to clerks to justices for information. He expressed the hope that clerks would read it at the next meeting of justices.

Mr. W. R. Blyton (Houghton-le-Spring) asked whether, as the Lord Chancellor had said that an error of judgment had been committed in the "three tulips case" at South Shields, the Home Secretary would recommend His Majesty to exercise his prerogative to enable the whole or the major portion of the fine to be refunded.

Mr. Ede replied that he would not like to make a statement on that point at the moment.

Lt.-Col. Lipton then asked whether the Secretary of State would introduce legislation to limit the power of magistrates to remand in custody for more than four weeks children awaiting trial in juvenile courts.

In reply, Mr. Ede said that circumstances varied so much that legislation for that purpose would not in his view be desirable. Any person who was aggrieved by the action of the court might apply to a judge in chambers for release on bail or to the High Court for an order requiring the magistrates to hear and determine his case.

Mr. J. E. MacColl (Widnes): "Will my right hon. Friend confirm that under the Criminal Justice Act, 1948, the period of remand was limited to three weeks? Is he also aware that many magistrates find that that length of time is a great handicap to them in dealing with the question of juvenile delinquency?"

Mr. Ede: "This is a very difficult matter and I am convinced that the majority of magistrates exercise wisely the discretion vested in them."

Mr. S. Silverman (Nelson and Colne): "Will my right hon. Friend make it clear that the remarks made by the Lord Chancellor apply equally in the remand of juvenile prisoners as they apply in the case of adult prisoners, and that it is quite improper in either case to use the power to remand as a form of penalty?"

Mr. Ede: "Yes, I agree with that, and it is probably even more improper in the case of juveniles than in the case of adults."

USE OF "J.P."

Lt.-Col. Lipton asked the Attorney-General why solicitors who were justices of the peace were forbidden to print the initials J.P. after their names on their notepaper.

The Attorney-General, Sir Frank Soskice, replied that he was not aware that solicitors were forbidden to print the initials J.P. after their names on notepaper. He assumed, however, that Lt.-Col. Lipton was referring to the practice of the Lord Chancellor and his predecessors in office to discourage the use of those initials on business notepaper. Where a case of that kind was brought to the notice of the Lord Chancellor, he caused a latter to be sent to the justice concerned explaining that in his opinion the use of the letters on firms' notepaper was undesirable as it might lead to the suspicion that the office of justice of the peace was being made use of to further the professional interests of the person concerned.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, June 19

NATIONAL INSURANCE BILL, read 3a.
TELEGRAPH BILL, read 2a.
PET ANIMALS BILL, read 3a.
CRIMINAL LAW AMENDMENT BILL, read 3a.
COMMON INFORMERS BILL, read 3a.

Thursday, June 21

NEW STREETS BILL, read 3a.
TELEGRAPH BILL, read 3a.
DANGEROUS DRUGS BILL, read 3a.

HOUSE OF COMMONS

Monday, June 18

COAL INDUSTRY BILL, read 3a.

Wednesday, June 20

TELEPHONE BILL, read 2a.

Friday, June 22

SLAUGHTER OF ANIMALS (AMENDMENT) BILL, read 2a.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons—*Contribution orders under the* 1933 *and* 1948 *Acts—Possibility of securing contributions by agreement instead of by court order.*

The view seems to be accepted in your answer to P.P. 1 at 115 J.P.N. 111, that there can be no valid agreement for payment of contributions. Apart from cases where a contribution order has been obtained, or the possibly rare cases where an agreement under seal has been entered into, is it not possible to have a valid agreement, under hand only, for payment of contributions by a parent towards the maintenance of a child, the consideration that the local authority concerned forbear to take proceedings for a contribution order? It is appreciated that there must be many cases in which a parent is invited to agree to make a voluntary contribution, but at the same time is informed that unless he is prepared to do so proceedings will be taken to procure a contribution order. The parent puts forward an offer which is acceptable and the agreement is embodied in a written agreement, which of course must be duly stamped.

If it is considered that such an agreement can be valid upon the basis that the consideration is the authority's withholding proceedings, I should be glad of your views on the following specific points:

(1) Where a parent agrees to pay a weekly contribution and this offer is included in a form of agreement which merely states that the parent agrees to pay, can it be contended that this is a valid agreement, although the consideration is not expressly stated, but is in fact the withholding of proceedings by the authority?

(2) In similar circumstances, how is the position affected by the inclusion in the form of the agreement of the words "in consideration of the authority withholding proceedings to obtain a contribution order, I agree to pay to etc. . . ."

It will be noted that a very strong recommendation has been made by the Home Office in the past that efforts should be made to get parents of such children to contribute voluntarily, in preference to obtaining a contribution order, where this is possible. This course has been frequently adopted, and the resulting agreement with the parent embodied in a form of agreement. It has always been contended that the consideration has been the withholding of proceedings by the authority, although possibly this has not always been set out in the agreement. SONE.

Answer.

On the whole, we think such agreements can be enforced if the consideration is that the local authority forbears to take proceedings. Our answers to the two specific questions are therefore:

(1) We think a court could enforce the agreement if satisfied by evidence that there was such consideration, but it is obvious that it is much better to state the fact in the agreement.

(2) This certainly strengthens the agreement. As to forbearance to sue generally *see* our article at p. 180, *ante*.

2.—Elections—*Qualification and disqualification—Summary conviction of illegal practice.*

Following proceedings by the Director of Public Prosecutions in the court of summary jurisdiction, an unsuccessful candidate (who was deemed to be his own election agent) at the local government election in May last, was on August 21, convicted under ss. 69 and 70 of the Representation of the People Act, 1949, and as a result his name appears on a corrupt and illegal practices list required to be made out under s. 40 of the Act. The person concerned, having been found guilty of an illegal practice (*see* ss. 72 and 148) became subject to the incapacities imposed by s. 140 (4) (*b*) of the Act (*see* s. 151), and his name will not appear on the register of electors shortly to come into force. Will you kindly state whether, in your opinion, the "reported" conviction by the court of summary jurisdiction (which presumably is not an election court) of an illegal practice, subjects the person convicted to incapacity under s. 139 (3) (*c*)? If not, is he disqualified under any other enactment?

Assuming he is within the section or otherwise disqualified, is it the duty of the returning officer, in the event of a nomination paper being put in on grounds (*b*) or (*c*) of s. 57 of the Local Government Act, 1933, to decide that the person is not validly nominated, or must the question of incapacity or disqualification be dealt with after the person is elected? ACO.

Answer.

We do not think s. 139 (3) (*c*) applies. Section 151 (*b*) expressly brings in s. 140, but not s. 139. Omission of his name from the register will render him ineligible for election, if his only qualification was being in the register. We do not find any other disqualifying enactment, and the last question put does not seem to arise.

Our general view as to the duty of the returning officer is that he should call a candidate's attention to any disqualification or lack of qualification believed to exist: this is a matter of courtesy, since a technical disqualification (or lack of qualification) is sometimes genuinely overlooked. But the penal consequences, and therefore the responsibility, rest upon the candidate. If the candidate chooses to persist, the question arising is for judicial determination. Some such questions may involve highly arguable points of law, *e.g.*, whether a person is a British subject, or (under the Act of 1933) whether poor relief "could have been granted" under the Blind Persons Act, 1920.

3.—Land—*Acquisition by agreement—Recital of consideration—Price enhanced for injurious affection.*

A local authority is acquiring a parcel of land for housing purposes, by agreement. The district valuer's statement includes an amount in respect of compensation for severance and injurious affection, the remainder being purchase money in the ordinary sense. It is not clear whether both these items should be included in the consideration shown in the conveyance to the local authority or whether it is legitimate to show only the purchase money (as such), a separate discharge being obtained for the compensation for severance, etc. ALUR.

Answer.

We think these amounts are an element in the consideration, and that the total should be shown. On an ordinary sale between private persons, the vendor would ask more, if he was adversely affected by severance or, *e.g.*, by the purchaser's intended use of the land, and we can see no justification for notionally dividing the price. Such a notional division strikes us as being a fraud upon the Revenue.

4.—Landlord and Tenant—*Notice to quit—Service when tenant not found.*

One of my council's tenants has been missing for several months and, since he left, the house has been occupied by his married daughter, who lives apart from her husband. My council desire to terminate the tenancy, dispossess the present occupant and let the house to other tenants. Can you please advise me how my council should proceed, having particular regard to the difficulty (1) of serving a notice to quit and (2) of serving a summons upon the tenant. This is an "aged person's" house, but the daughter is not an aged person. Since she has paid the rent on her father's behalf, can the council assume that she has his authority to receive a notice to quit, and hand over possession? If not, what can be done? ASTL.

Answer.

We think a notice to quit addressed to the tenant can be served by virtue of s. 167 of the Housing Act, 1936: *see* article at p. 213 *ante*.

5.—Licensing—*Protection order—Police objection to applicant—method of advancing.*

May I seek your valued opinion in regard to the evidence that may be given in relation to the character of an applicant for a justices' licence to sell intoxicating liquor.

I successfully opposed the granting of a protection order to the applicant on the grounds that I did not consider her a fit and proper person to hold a justices' licence in view of her record, which is as follows:

1. *December* 29/30, 1943—Cautioned for (1) supplying, (2) aiding and abetting consumption outside permitted hours;
2. *June* 26, 1947—Fined £5 and £4 4*s*. costs for supplying during non permitted hours. This sentence was quashed on appeal to sessions as she was not present when offence was committed.
3. *October* 27, 1948—Dismissed Probation of Offenders Act on payment of £9 10*s*. costs for obstructing a police officer in the execution of his duty.
4. *October* 15, 1949—Reported for supplying intoxicating liquor during non permitted hours. No further action as it was known the licensee was relinquishing the licence at the end of the month.
5. *September* 14, 1950—Fined £5 and £5 5*s*. costs for dangerous driving and 10*s*. for unlicensed driver.

At the hearing of the protection order, the applicant's solicitor read out the list I have mentioned and commented that they were all of a trivial nature, and the dangerous driving conviction had no bearing

on the application. I contended that the presiding magistrate should be informed of the details of each case if he was to fully understand the reasons for police objection, and also to properly appreciate the defendant's character, and with some demur on the part of the clerk of the court, succeeded to some extent in elaborating the facts of each case, with the result that the protection order was refused on the grounds that it was a more suitable case for the full bench of the licensing justices to decide, when the transfer sessions were held.

The sessions are to be held on December 5, 1950, and I am naturally anxious to know if I am right in my contention. I shall, of course, be represented, but, so far, in spite of a thorough search, I cannot find any support or rebutment of my contention, except a light mention that it is in the discretion of the magistrates to accept or refuse evidence. I am sure that my right to give details of each case is bound to be strongly contested.

I should like to mention the points I desire to make to the magistrates with regard to the cases quoted :

Case 2. This was quashed on the grounds that applicant was absent when the offences were committed. Apart from the fact that it is doubtful if this would have been upheld if taken to a higher court, I contend that the facts can quite properly be mentioned.

Case 3. This was a bad case of obstruction in which an inspector and sergeant entered the premises and found all the evidence of supplying and consuming during non-permitted hours, but owing to the action of the applicant and her daughters who were present, the evidence was destroyed. The applicant was arrested and certified drunk by the divisional surgeon.

Case 4. The reason why no action was taken and the fact that note was made to oppose any further application for a justices' licence.

Case 5. The fact that the applicant was arrested for being under the influence of drink, etc., whilst driving a motor car, although not certified. How she came to drive the vehicle and what happened to show that she is an irresponsible person for the duties of a licensee.

Answer. OBST.

There is no law or accepted practice on the point of how objection to the grant of a protection order should be advanced. A court of summary jurisdiction " may, if they think fit," grant an order in any case where a transfer may be authorized (Licensing (Consolidation) Act, 1910, s. 88) : a transfer may be authorized by the licensing justices in the exercise of their discretion to a transferee who must be a fit and proper person, in the opinion of the licensing justices, to be the holder of the licence (s. 23). The responsibility is placed fairly on the shoulders of the justices.

The justices, by well established practice, look to the police for guidance in the matter of the exercise of their discretion ; buj the police have no powers to press for any evidence to be received of the facts upon which they base their opposition. In our opinion, it is sufficient to say merely that the police advise that the transfer be not granted on the ground that, in the police view, the applicant is not a fit and proper person, a view which they have formed on a knowledge of the applicant over a period of seven years. The justices might then properly be told of the two proved offences—obstructing a police officer in the execution of his duty and dangerous driving. They may then be told, quite properly in our opinion, that other evidence is available of the applicant's conduct when she previously held a licence and which the justices may call upon, to the extent that they think fit, to guide them in the exercise of their discretion. In our opinion, the justices may admit any evidence of fact which has a bearing on the issue of whether or not the applicant is a fit and proper person to be the holder of a licence.

6.—Pleasure Grounds—*Charge for admission—Free admission of limited class.*

Under a local Act this authority has power to charge for admission to the gardens for a certain period of the year. The council has exercised that power and now proposes to remit the charge in respect of old age pensioners. I should be glad to have the benefit of your opinion, whether you consider the council may apply the charge to all persons other than certain classes specially excluded by resolution, such as I have mentioned, in the absence of express statutory power.

Answer. ANSE.

This seems different from the cases which arose some years ago about municipal transport services. The latter were supposed to pay their way, and therefore free travel granted to privileged classes, such as blind persons and pensioners, was, in reality, subsidized by the passengers who paid. Public parks cannot pay their way, and the power of charging for admission, when granted exceptionally by Parliament, is no more than a slight mitigation of the expense of upkeep. The power of charging given by the local Act is at the council's option, and since the council could admit all members of the public without charge, we doubt whether it could be said that they were failing to collect money which it is their duty to collect, when they admit some persons without charge. We cannot see the district auditor raising objection to the concession. In a sense, every concession of the sort carries some danger of being drawn into a precedent (pensioners, blind persons, hospital patients, service personnel in uniform, and so on), but this is hardly an objection of law.

7.—Rating and Valuation—*Property used in past pending repair—Prospective tenant living rent free—Whether rateable occupation.*

A rectory situated in this district recently became vacant owing to the death of the incumbent. It is now occupied by Mr. X, but owing to its bad state of repair he can make use of certain rooms only, therefore no rent is being charged and no formal tenancy has been created. When the necessary repairs are carried out at some future date, Mr. X will enter into a formal tenancy bu in the meantime the sequestrator claims that he is in the position of a caretaker only and that no rates are payable. I shall be glad to have your views on this point. ATD.

Answer.

The sequestrator's claim is unconvincing. The precise nature of the arrangement made with X is not clear, but as a prospective tenant let into occupation his relation to the freeholder is quite different from that of a caretaker : so are his rights against trespassers. He is apparently a tenant at will, and we see no reason why he should not be regarded as in rateable occupation.

8.—Road Traffic—*Road Traffic Act*, 1930, *s.* 47, *as amended by s.* 27 *of the Public Utilities Street Works Act*, 1950—*Recovery of expenses of highway authority.*

Under the provisions of the above Acts, the highway authority, if satisfied that traffic on any road for the maintenance of which they are responsible should, by reason of any works being executed or proposed to be executed on the road, be restricted or prohibited, may by order restrict or prohibit the use of that road.

Section 27 (2) of the Act of 1950 provides that where by reason of undertakers' works the use of a road is restricted or prohibited as above, the highway authority may recover from the undertakers the costs reasonably incurred by the highway authority in respect of the items set out in this subsection.

A highway authority, acting under the provisions of s. 47 of the Road Traffic Act, 1930 (as amended), will, of necessity, incur certain expenditure in respect of newspaper advertisements and other public notices.

I shall be glad of your valued opinion as to whether the highway authority's right to recover from the undertakers is limited to the items set out in the said s. 27, or whether the highway authority may, in addition, recover from the undertakers the costs reasonably incurred in connexion with the making of an order under the Road Traffic Act, 1930. SNJ.

Answer.

In the absence of authority, this is no doubt an arguable question, but we incline to the view that the costs referred to may include such items as notices, advertisements for tenders, and other expenses that are as necessary as the cost of labour and materials. We think the test is whether the costs are wholly connected with the work and necessarily incurred.

9.—Weights and Measures Act, 1889—*Coal—Load weighed as load but packed in sacks.*

When delivering one load of coal in sacks in one vehicle to one purchaser, it is the practice of many merchants to treat such delivery as a bulk load, and to enter the tare weight of the vehicle as including the weight of the sacks. The number of sacks is not stated, nor the amount each contains. Is it a correct procedure, therefore, for a merchant to first obtain the tare weight of vehicle (including sacks), fill the sacks (without weighing each sack), and then obtain the gross weight and thereby the net weight ? If so, how is the weight ticket or consignment note completed ? And how for example would a load of 1 *ton* 19 *cwt.* 3 *qrs.* in forty-three sacks be shown ? If not, what is the correct procedure ? I shall be obliged by your views in the light of the requirements of ss. 21, 22 and 29 of, and sch. 3 to, the above Act.

A HOP.

Answer.

What the customer wants to know, and what the weight ticket ought to tell him, is how much coal he receives. The seller can put it loose in a cart and shoot it on the customer's premises (or, so far as this Act goes, into the street, as used to be normal in some areas), or can put it in sacks or other containers for convenience of handling. All this matters nothing, so long as the weight of coal, apart from the containers, is what the customer expects. The method described seems to us, therefore, to be correct, and the weight ticket in the case put to us should state 1 *ton* 19 *cwt.* 3 *qrs.* We do not find anything in the sections or the schedule to contradict this view. The coal is " conveyed for delivery on sale in a vehicle in bulk," for which s. 22 provides, and in our opinion " sold in bulk " within the meaning of the schedule. In other words, we do not consider that it is " sold in sacks," within the meaning of the schedule, and accordingly the seller is not required to state (or himself to know) just how much is in each sack.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

BOROUGH OF SURBITON

Assistant Solicitor

APPLICATIONS are invited for the post of Assistant Solicitor on the permanent staff of the Town Clerk's Department at a salary in accordance with Grade A.P.T. VIII (£735 × £25—£810 per annum, plus London Weighting).

Applicants must have had experience in conveyancing and advocacy, and previous Local Government experience is essential. Terms of appointment and forms of application may be obtained from the undersigned to whom completed application forms should be submitted not later than July 27, 1951.

Canvassing, directly or indirectly, will disqualify, and applicants must state whether or not to their knowledge they are related to any member or senior officer of the council.

R. H. WRIGHT,
Town Clerk.

Council Offices,
Surbiton.

COUNTY OF DEVON

Petty Sessional Divisions of Wonford and Cullompton

APPLICATIONS are invited from suitably qualified Solicitors or Barristers for the appointment of whole-time Clerk to the Justices of the above Divisions.

The appointment will be superannuable (subject to satisfactory medical examination), and the salary will commence at £1,750 per annum, rising by annual increments of £50 to £2,000 per annum. Staff and office accommodation will be provided at Exeter and Cullompton.

The appointment is subject to confirmation by the Secretary of State, and will be determinable by three months' notice on either side.

The person appointed may, at a later date, be required, without additional salary, to act as Clerk to such other Petty Sessional Divisions in the county as may be decided by the appropriate authority.

Applications, with the names and addresses of three referees, must reach the undersigned not later than July 21, 1951.

H. A. DAVIS,
Clerk to the Standing Joint Committee.

The Castle,
Exeter.
June 25, 1951.

BOROUGH OF TWICKENHAM

Appointment of Assistant Solicitor

APPLICATIONS are invited for the above appointment on the permanent establishment at a salary in accordance with the A.P.T. Division Grade VII/VIII of the National Scales commencing at £685, plus London Weighting. The appointment will be subject to the National Scheme of Conditions of Service and the Local Government Superannuation Act, 1937.

Applications, stating age, qualifications, experience and details of present and past appointments, and giving the names and addresses of two referees, must reach the undersigned not later than Monday, July 30, 1951.

Candidates must, when making their application, disclose in writing whether to their knowledge they are related to any member or senior officer of the Council.

Canvassing in any form will disqualify.

W. H. JONES,
Town Clerk.

Municipal Offices,
Twickenham.

Amended Advertisement.

CITY OF SHEFFIELD

Senior Prosecuting Solicitor

APPLICATIONS are invited for the appointment of Senior Prosecuting Solicitor on the permanent Staff in Grade X (£870-£1,000 per annum) of the scales of salaries of the National Joint Council for Local Authorities' Staffs. The commencing salary will be fixed according to qualifications and experience of the successful candidate.

Applicants must have experience in Advocacy and Common Law: be prepared to take charge of the Prosecutions and Common Law Section, and to assist as required in the general work of my department. Previous Local Government Service is not essential.

The appointment is subject to the conditions of service of the N.J.C. as adopted by and applied to the staff of the corporation, and is terminable by three months' notice on either side, which may be given at any time. The successful candidate will be required to pass a medical examination and will not be allowed to engage in private practice.

Applications, stating age, qualifications, experience, details of present and previous appointments with two recent testimonials, and the names of two other persons of whom personal inquiries can be made, must be delivered to the undersigned not later than Monday, July 16, 1951.

Canvassing, directly or indirectly, will disqualify.

JOHN HEYS,
Town Clerk.

Town Hall,
Sheffield.
June 28, 1951.

When replying to advertisers please mention the Justice of the Peace and Local Government Review.

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